BIENNIAL REPORT

OF THE

ATTORNEY GENERAL

TO THE

GOVERNOR OF THE STATE OF ALABAMA

FOR THE PERIOD

FROM OCTOBER 1, 1906, TO OCTOBER 1, 1908

ALEXANDER M. GARBER, Attorney General
THOMAS W. MARTIN, Ass't Attorney General

MONTGOMERY, ALABAMA
THE BROWN PRINTING COMPANY, STATE PRINTERS AND BINDERS
1909

ATTORNEYS GENERAL OF ALABAMA.

1819 to 1907.

Henry Hitchcock	1819
Thomas White	1823
Constantine Perkins	1825
Peter Martin	1832
Alexander B. Meek	1836
John D. Phelan	1836
Lincoln Clarke	1838
Matthew W. Lindsay	1839
Thomas D. Clarke	1843
William H. Martin	1847
Marion A. Baldwin	1840
John W. A. Sanford	1865
Joshua Morse	1868
John W. A. Sanford	1870
Benjamin Gardner	1872
John W. A. Sanford	1874
Henry C. Tompkins	1878
Thomas N. McClellan	1884
William L. Martin	1889
William C. Fitts	1894
Charles G. Brown	1898
Massey Wilson	1903
Alexander M. Garber	1907

Note: For many years, the law required the Attorney General to act as Solicitor for the Circuit in which the seat of government was located.

LIST OF CIRCUIT, CITY AND COUNTY SOLICITORS.

First Circuit_____Hon. Oscar L. Gray, Butler, Ala.
Second Circuit_____Hon. C. R. Bricken, Luverne, Ala.
Third Circuit_____Hon. Henry B. Steagall, Ozark, Ala.
Fourth Circuit__Hon. J. F. Thompson, Centreville Ala.
Fifth Circuit_____Hon. W. B. Bowling, Dadeville, Ala.
Sixth Circuit_____Hon. W. B. Oliver, Tuscaloosa, Ala.
Seventh Circuit____Hon. B. H. Burr, Talladega, Ala.;
(Succeeded by Hon. Walter S. Smith, Lineville, Ala., Feb. 1, 1909)
Eighth Circuit_____Hon. D. C. Almon, Decatur, Ala.
Ninth Circuit___Hon. Richard C. Hunt, Ft. Payne, Ala.
Tenth Circuit__Hon. John McQueen, Birmingham, Ala.
Eleventh Circuit_Hon. R. T. Simpson, Jr. Florence, Ala.
Twelfth Circuit____Hon. Richard H. Parks, Troy, Ala.
Thirteenth Circuit_Hon. Jas. N. Granade, St. Stephens, Ala.
Fourteenth Circuit_____Hon. W. C. Davis, Jasper, Ala.
Fifteenth Circuit__Hon. D. D. Askew, Wetumpka, Ala.
Sixteenth Circuit_Hon. Geo. W. Darden, Oneonta, Ala.
(Succeeded by Hon. J. A. Embry, Ashville, Ala., Nov. 18, 1908).

City Court of Andalusia, Hon. L. H. Brassell, Andalusia, Ala.

City Court of Anniston, Hon. W. C. Tunstall, Jr., Anniston, Ala.

City Court of Bessemer, Hon. Ben F. Perry, Bessemer, Ala.

City Court of Gadsden, Hon. W. J. Boykin, Gadsden, Ala.

City Court of Mobile, Hon. Jas. H. Webb, Mobile, Ala. (Succeeded by Hon. Nicholas E. Stallworth, Mobile, Ala., Nov. 28, 1908.)

City Court of Montgomery, Hon. S. H. Dent, Jr., Montgomery, Ala. (Succeeded by Hon. Philip H. Stern, Montgomery, Ala., Jan. 1, 1909.)

City Court of Selma, Hon. J. F. Thompson, ex officio, Centreville, Ala. Hon. R. H. Mangum, Deputy Solicitor, Selma, Ala.

City Court of Talladega, Hon. Marion H. Sims, Talladega, Ala.

County Court of Choctaw, Hon. W. H. Lindsey, Butler, Ala.

County Court of Clarke, Hon. Q. W. Tucker, Grove Hill, Ala.

County Court of Clay, Hon. E. J. Garrison, Ashland, Ala. (Succeeded by Hon. R. G. Rowland, Ashland, Ala., June 30, 1909.)

County Court of Cleburne, Hon. W. B. Merrill, Heflin, Ala.

County Court of Coffee, Hon. J .F. Sanders, Elba, Ala.

County Court of Hale, Hon. Thomas E. Knight, Greensboro, Ala.

Criminal Court of Jefferson County, Hon. H. P. Heflin, Birmingham, Ala.

County Court of Marion, Hon. R. W. Quinn, Hamilton, Ala.

County Court of Pike, Hon. E. R. Brannen, Troy, Ala.

County Court of Sumter, Hon. Jas. A. Mitchell, Livingston, Ala.

County Court of Tuscaloosa, Hon. C. B. Verner, Tuscaloosa, Ala.

Lee County Law and Equity Court, Hon. C. A. L. Samford, Opelika, Ala.

Madison County Law and Equity Court, Hon. Jas. H. Pride, Huntsville, Ala.

Morgan County Law and Equity Court, Hon. L. P. Troup, Decatur, Ala. (Succeeded by Hon. D. F. Greene, Decatur, Ala., Nov. 19, 1908.)

Walker County Law and Equity Court, Hon. Sheriff Lacy, Jasper, Ala.

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ATTORNEY GENERAL'S REPORT.

LETTER OF TRANSMITTAL.

STATE OF ALABAMA,
OFFICE OF THE ATTORNEY GENERAL.

MONTGOMERY, Ala., October, 1908.

Honorable B. B. Comer,

Governor of Alabama.

Dear Sir:—

I have the honor to transmit herewitth, in accordance with the statute of Alabama, the biennial report of the Attorney General for the period of two years, from October 1st, 1906, to October 1st, 1908.

The volume of business transacted during this biennial period has greatly exceeded that transacted during any similar period in the history of the State. A proper and satisfactory disposition of the business has taxed to its capacity the force of this department. We have labored in season and out of season to keep abreast with the work of the department, and while my assistant and I have been constantly engaged, we have found it impossible to keep up with the unusual amount of business coming to the office through the various channels prescribed by the statutes. Thus many matters have been unavoidably delayed on account of our inability to reach and dispose of them more promptly. Owing to this unprecedented volume of business, the preparation and submission of this report has also been necessarily

deferred for several months. It has been placed aside repeatedly in order to give attention to important current matters demanding at the time immediate action.

This report contains:

First—(A) A general review of the work of the Department for the past two years relating to matters of more special public interest, and including the more important litigation in which the State, through her official representatives, has been engaged. (B) Recommendations suggested by experience in the conduct of the affairs of the office.

Second—A statement of all civil suits and claims in which the State is concerned, including a statement showing the several amounts collected.

Third—(A) A tabulated statement showing the number and character of criminal cases disposed of in the entire State for the period of two years covered by this report, as consolidated from reports of solicitors; the number of convictions, acquittals, *nolle prosequies* and abatements; the number of sentences to death, to the penitentiary, to hard labor for the county, and to jail; the number of fines imposed and secured and the number committed to the State Reformatory.

(B) Tabulated statemtents showing the number and character of criminal cases disposed of in each judicial circuit and in each city or criminal court or other court having a separate solicitor, and the number of convictions, acquittals, sentences, etc. in each, as in the general statement, so as to show the work of each solicitor separately.

Fourth—Official opinions of the Attorney General rendered during the past two years which he deems of general public interest.

I

GENERAL REVIEW OF THE WORK FOR THE TWO YEARS.

The growth of the business in this Department has been recognized for several years as the State has multiplied in population and developed in material resources. While an increase of the work may be expected each year to respond in a great measure to the State's advancement and progress, yet the years 1907-1908 have marked an abnormal increase both in the volume and importance of the business in the Attorney General's office. A number of causes have contributed to bring about this situation. Among the most significant of these causes were two sessions of the Legislature; the enactment of various laws establishing additional State Boards, Commissions and Departments; the adoption of a new Code, material changes in the school laws; the passage of the "Municipal Code" Act and the General Prohibition Law of 1907; the natural growth of business in the several executive departments and before the Supreme Court; and the effort of the Legislature—probably for the first time in its history—to enact statutes, unfettered and unhampered, seeking the reasonable control and regulation of foreign corporations, and common carriers transacting an intra-state business in Alabama.

An examination of the statutes for the past several decades discloses the fact that practically every law relating to this class of corporations and to their taxation bears the impress of some exemption in their favor. Thus

the attempt of the Legislature to pass laws for the proper regulation and taxation of foreign corporations and to prescribe statutory rates for railroads, records a more distinct reformation or revolution (in some respects a pioneer movement) in the policy of the State Government than any noted change in the history of Alabama since the inauguration of Governor Houston in 1874; and has resulted in provoking bitter opposition from a number of the railroads and other corporations. Various suits, in the Federal and State Courts, attacking the rate laws and the foreign corporation franchise tax and involving most important, extensive and expensive litigation, have been instituted against State Officials. These causes are now pending and constitute by far the most important litigation in which the State has been involved or that has claimed the attention and supervision of the Attorney General for many years.

These cases necessarily progress slowly to final adjudication through the courts. The foreign and railroad corporations assail the statutory freight and passenger rates and the annual franchise tax on the ground that they are discriminatory, unreasonable and confiscatory, and will result in depriving them of their property without due process of law, and denying to them the equal protection of the laws in violation of the Fourteenth Amendment to the Federal Constitution. These questions will be finally settled at the end of this litigation.

It is not and should not be the policy of the State to enact laws which will operate unfairly or will cast an unequal burden upon any class of persons within its jurisdiction,—and it may be safely assumed that a due sense of justice and fairness on the part of the people, through their representatives in the Legislature, will always outline a just and reasonable policy in the State's control of foreign corporations.

It may also be asserted that the only limitations upon the sovereignty of a State in the control of foreign corporations transacting business within its territory, are, (1) that the regulations prescribed shall not deprive them of property without due process of law, or deny them the equal protection of the laws, and (2) that such regulations shall not amount to an interference with interstate commerce or with other business of a Federal nature.

CASES INVOLVING THE VALIDITY OF THE "PRIVILEGE TAX" ON RECORDED MORTGAGES, ETC.

These cases are included in the statement of civil suits under subdivision II of this report.

The cases of Manhattan Trust Company vs. Gaston, Central Trust Company vs. Green, and L. & N. R. R. Company vs. Robinson were pending when I assumed the office of Attorney General. These cases involved the constitutionality of the provisions of the revenue law of 1903, imposing a privilege tax on recorded mortgages (Gen'l. Acts of 1903, page 227). The Supreme Court has decided the appeals in the first two cases, holding the statute to be constitutional. The Robinson case was dismissed when the other two cases were decided.

The Act of 1903, amending subdivision 7 of section 3911 of the Code of 1896, first established the system of taxing recorded instruments. It imposed a privilege tax on recorded mortgages of fifteen cents on every one hundred dollars of indebtedness secured, and provided that there should be no other tax collected upon any

such instrument on which the tax prescribed by the act shall have been paid. The Supreme Court had occasion to construe this statute in the case of Barnes v. Moragne, 41 So. 947. It was there held that the Act of 1903, imposing a privilege tax on recorded mortgages, operated to *repeal* subdivision 7 of section 3911 of the Code of 1896, imposing an *ad valorem* tax on solvent credits. Under this decision, a large amount, something over sixty thousand dollars, paid for taxes on solvent credits, was refunded to tax payers. On March 4, 1907, by a separate Act, solvent credits were again made taxable. And by the Revenue Act of March 7, 1907, subdivision 7 of section 3911 of the Code of 1896, as amended by the Act of March 4, 1903, was again amended. Both acts have since been codified in the Code of 1907.

The record mortgage law as it now stands contains several new features. Contracts of conditional sale are now made subject to the privilege tax, as are also extension or renewal contracts; and when any instrument liable for this tax embraces property both in this and other States, the State Board of Compromise is clothed with authority to ascertain the proportion of the indebtedness secured by the instrument upon which the tax shall be paid. These additional provisions have rendered the present law far more effective, still it is not yet framed to meet properly and equitably many cases which arise as the result of the progressive business methods of modern finance.

RAILROAD RATE LITIGATION.

A brief synopsis of the railroad rate cases pending in the Circuit Court of the United Statets for the Middle District of Alabama, will be found elsewhere in this report (under subdivision II).

The bills in the cases were filed to restrain the enforcement of certain passenger and freight rate statutes and several other statutes regulating railroads, enacted by the Legislature of Alabama in 1907, upon the claim that they were confiscatory in their effect upon the property of the railroad companies, and also that the statutes denied the railroad companies the equal protection of the law. There were twelve (12) Complainant Railroad Companies to file suit at the beginning of the litigation. Subsequently the Central Trust Company of New York filed a bill against the Central of Georgia Railway Company to restrain that company from putting the rates into effect, and also to restrain other defendants in the same way that similar defendants were sought to be restrained by the bills of the railroad companies.

Adjustment and compromise was effected in seven of the cases, leaving unsettled and still contested the suits instituted by the Western Railway of Alabama, Central of Georgia Railway Company, South & North Alabama Railroad Company, Nashville, Chattanooga & St. Louis Railway, Louisville & Nashville Railroad Company, and the Central Trust Company of New York.

Restraining orders were made in all of the cases of the railroad companies on the 30th of March, 1907, and on the 2nd of December, 1907, and in the case of the Central Trust Co. of New York on the 27th of November, 1907, to remain in force until the determination of the Complainants' motion for interlocutory injunctions.

The interlocutory order of the Judge of the United Statets Circuit Court was made and entered in each of

the six contested cases on April 20th, 1908, by which the complainants were awarded injunctions *pendente lite*, against the respondents, the Railroad Commission of Alabama et al., as prayed in the supplemental bills. The effect of the court's decree was (1) to restrain the enforcement of the passenger and freight rate statutes and other statutes referred to in its decree, (2) to enjoin the Solicitors, Sheriffs and Clerks, and certain named persons, as passengers and shippers and all other shippers and passengers, (3) and to restrain the members of the Railroad Commission from reducing any passenger or freight rate below that charged by the several railroad companies between points in the State of Alabama on March 25, 1907, the date of the commencement of the original suits.

The members of the Railroad Commission and the Attorney General were not enjoined by the order of the court from enforcing the statutory passenger and freight rates, for the reason that the Legislature enacted at its special session a statute, approved Nov. 23, 1907, excluding from the Railroad Commission and the Attorney General all power, authority or duty to enforce any rates, fares or charges for the transportation of property or passengers, prescribed by statute.

Appeals were prosecuted by respondents to the United States Circuit Court of Appeals for the Fifth Circuit, on May 19, 1908, from the interlocutory orders of the Circuit Court granting the injunctions *pendente lite*. (Before the publication of this biennial report, on March 16 and 17, 1909, these cases were argued before the Court of Appeals in New Orleans and elaborate briefs filed by both sides. The two points of main insistence by the Attorney General and associate counsel on behalf of the appellants, the Railroad Commission et al., were, viz: (1) That the action of a railroad commission

in reducing or fixing freight or passenger rates is legislative in its character, and that such action may not be overruled by injunction whatever may be the right of a common carrier to restrain the enforcement of the rates after they have been established, and (2) that the showing made by the complainants, by the allegations of their bills and by their affidavits, of the effect upon the revenues of the railroads, by reason of the enforcement of the statutory rates, or any of them, was insufficient and, therefore, under settled principles of law, the Circuit Court was not justified or authorized to restrain the enforcement of the 2½ cent passenger rate act and the eight group acts, or any of them. These appeals resulted in a victory for the State, the United States Circuit Court of Appeals handing down on April 5, 1909, an opinion sustaining our contentions, reversing and annulling each of the decrees of the Circuit Court and dissolving the injunctions issued on each decree, and remanding each cause to the Circuit Court for further proceedings in conformity with the opinion of the Circuit Court of Appeals.)

At the beginning of these cases the Governor employed the following special counsel to assist the Attorney General under the authority given him in section 52 of the Act creating the Railroad Commission (Gen. Acts 1907, p. 165): Messrs. Samuel D. Weakley, H. C. Selheimer, Horace Stringfellow, Frank S. White and R. W. Walker. Subsequently Judge Weakley and Mr. Selheimer were the only counsel retained to assist the Attorney General in the further progress of the cases; and whatever of success has thus far resulted to the State in this litigation is due in great measure to the diligent and effective work of these gentlemen.

LITIGATION ARISING FROM FRANCHISE TAX ON FOREIGN CORPORATIONS.

In point of revenue received by the State, this litigation is probably of greater moment than any in which the State is now involved. The actual amount payable into the State Treasury annually under this law by all classes of foreign corporations is estimated at over $100,000.00.

This tax is imposed upon foreign corporations for the privilege of doing business in the State in pursuance of the provision contained in section 232 of the Constitution of 1901, requiring the Legislature to provide for the payment of a *franchise tax* by every foreign corporation authorized to do business in the State. The tax is based on the actual amount of capital employed by each corporation in this State, strictly benevolent, educational or religious corporations being exempt from the payment of the tax. The Legislature of 1903 enacted a statute, approved September 30th, 1903, putting in effect for the first time this constitutional provision, but excepted from the operation of the law *"railroad, telegraph, long distance telephones, express and sleeping car, life and fire insurance companies,"* in addition to those corporations mentioned in the constitutional exception. These legislative exceptions and certain alleged irregularities in the passage of the Act of 1903, rendered the law practically nugatory so far as carrying out the constitutional mandate, until the present law was enacted in 1907.

The present statute, enacted by the Legislature of 1907, approved March 7, 1907, and subsequently adopted and codified in the Code of 1907, as sections 2391 and 2399, inclusive, contains no exemption save those in favor of *"strictly benevolent, educational and religious corporations,"* the particular corporations named in the

constitution. The operation of this law upon railroad companies and other foreign corporations employing large amounts of capital in this State at once gave rise to legal proceedings for the purpose of testing the validity and constitutionality of the statute.

These cases are referred to more in detail under subdivision II of this report. Six foreign railroad corporations, viz: Louisville & Nashville Railroad Co.; Central of Georgia Railway, Seaboard Air Line Railway, Southern Railway Co., Atlantic Coast Line R. R. Co. and Nashville, Chattanooga & St. Louis Railway, paid the tax for the year 1908 and instituted suits at once to recover the amounts so paid. The State prevailed in the lower courts and in the Supreme Court of Alabama. The four railroad companies first named have prosecuted writs of error to the United States Supreme Court. The cases are set for hearing in the latter court on Dec. 13, 1909.

The argument most strongly pressed and relied upon by the railroad companies is predicated on that provision of the Fourteenth Amendment of the Federal Constitution which prohibits a State from denying to any person within its jurisdiction the equal protection of the laws. In short, it is urged that a statute enacted in obedience to section 229 of the Constitution, adopting one basis of a franchise tax for domestic corporations, and the passage of a law in compliance with section 232 of the Constitution prescribing another and more burdensome basis for foreign corporations, is violative of the 14th Amendment of the Federal Constitution. The State contends on the other hand that the statute is valid and constitutional; that it operates upon a wholly different subject of taxation than the statute imposing a tax on domestic corporations, and that it is not a denial of the equal protection of the law to impose on a foreign corporation an annual tax for the privilege of doing busi-

ness in the taxing State, when no such tax or a tax of a different amount, is imposed on domestic corporations engaged in like business.

This is the chief point in controversy, but there are various other questions presented in the records of the different cases.

The total amount of tax collected for 1908 and 1909 from the above corporations and involved in this litigation (the tax for 1909 being paid and held under an agreement, awaiting the final termination of the litigaion) is $136,945.45.

The cases were advanced on the docket of the United Statets Supreme Court on motion of the Attorney General in order to secure a decision by that court before it becomes necessary to pay the tax for the year 1910.

AMOUNTS COLLECTED BY THE ATTORNEY GENERAL.

The following amounts have been collected by the Attorney General and turned into the State Treasury:

Alabama Cordage Co. for hire of convicts	$2,341.72
J. A. Ridley, Tax Collector of Jackson Co.	900.00
Manhattan Trust Co., mortgage tax	3,000.00
Central Trust Co., mortgage tax	1,111.72
L. & N. R. R. Co., mortgage tax	600.00
H. H. Cooper, Tax Collector, Baldwin Co.	3,500.00
Total amount collected	$11,453.44

This does not include the several amounts aggregating $136,945.45 held by Probate Judges, on account of Franchise Tax in litigation, nor the various sums which, from time to time, are paid to the State as the result of opinions of the Attorney General.

NEW STATUTES PASSED AND CONSTRUED.

In addition to the submission of causes in the Supreme Court and civil litigation of the most important character, growing out of new revenue laws and the effort to control and regulate public service corporations, this department has been frequently engaged in construing many of the new statutes and amendments to old statutes during this biennial period. This branch of the Attorney General's work at times has been exceedingly difficult and has required much care and research. A glance at the opinions included in this report delivered to the various departments will serve to give some idea of the many questions presented for investigation and decision. Many important laws were enacted by the Legislature of 1907. The Railroad Commission was charged with various duties and clothed with extensive powers. The State Tax Commission was established, consisting of a chairman and two associate members, and comprehensive powers were given to the Commission in the supervision and equalization of tax assessments. A law was enacted imposing an intangible franchise tax upon certain corporations. There were also established the department of the Inspection of Jails, Alms-houses and Cotton Factories; the department of the State Game and Fish Commission; the Bureau of Cotton Statistics; the Alabama State Sanatorium; the Board of Pharmacy; the Live Stock Sanitary Board; the State Board of Medical Examiners; State Bank Depositaries and the State Text-book Commission. Laws relating to appropriations, child labor, delinquent children, elections, municipal government, prohibition, schools, public health, taxation, railroads, insurance and others were changed in many important respects or new statutes enacted.

This is but a brief summary of the more important work of the Legislature of 1907 at its regular session,

and special session of Nov., 1907, and the construction and interpretation of many features of the different laws enacted has added very greatly to the duties of the Attorney General.

CRIMINAL CASES.

Form the general tabulated statement (sub-division III (A) of this report) it will be seen that 20,672 criminal cases were disposed of in the entire State during the two years ending September 30, 1908. Of this number there were 11,933 convictions, 2,734 acquittals, 5,153 *nolle prosequies,* and 852 cases were abated or withdrawn. Of the 11,933 convictions, there were 14 sentences to death, 1,494 to the penitentiary, 2,479 to hard labor for the county, 207 to jail and 7,739 fines were imposed or secured. There were two committals to the State Reformatory and so far as shown by the reports made to this office, there were no committals to the Insane Hospital.

From an examination of the preceding biennial reports submitted by this department to the Governor, it is ascertained that during the two years covered by this report, a larger number of criminal cases was disposed of than during any similar period since the system of reporting to the Attorney General by solicitors was first adopted. The nearest approach to the number (20,672) disposed of during the two years covered by this report, appears from the report submitted for the two years ending September 30, 1906, by Hon. Massey Wilson, and the report submitted for the two years ending Sepember 30, 1902, by Hon. Chas. G. Brown. These reports show respectively 13,616 cases and 13,388 cases disposed of during those biennial periods—the number disposed of during this biennial period being 7,056 greater than for the two years ending September 30, 1906, and 7,284 greater than for the two years ending September 30, 1902. The total number of cases dis-

posed of during the two years ending September, 1904, was 11,574, which is less than the *convictions* (11,933) alone secured during this biennial period, ending September 30, 1908.

I am unable to offer a rational or satisfactory explanation of this surprising increase in the number of criminal cases before the trial courts of the State. A growing spirit of law defiance and a corresponding indifferent spirit of law enforcement may be assigned as the reason. I am reluctant to even suggest, much less advance, such a degrading cause in the face of the evident moral, social and educational development of our citizenship, surrounded as it is on all sides by schools and churches and uplifting influences. The more probable cause is the increase in the number of courts, the consequent increase in the sessions of the grand jury in each community, greater vigilance by the members of that body in ferreting out crime, the new criminal statutes enacted and the growth in the population of the State.

It is to be observed also in this connection that hundreds of misdemeanor cases—probably 3,000 or more—during a biennial period are not reported to this department. Many cases of this character are disposed of annually in the various counties of the State by County Courts and no account of them reaches this Department, the prosecuting officers being deputy solicitors, and unless required by special local statutes to do so, do not make reports to the Attorney General. It is a difficult and tedious task on the part of both the solicitors and the Attorney General to record, file and compile these cases, but since it affords important data and is required by law, I think that all solicitors, regardless of their character or the court in which they represent the State, for the purpose of securing complete data, should be required to report to this department, and the statute should be amended so as to accomplish this result.

THE NUMBER OF CRIMINAL CASES DISPOSED OF IN THE STATE DURING THE 24 YEARS FROM OCTOBER 1, 1884, TO OCTOBER 1, 1908, IS AS FOLLOWS:

For 2 years ending Sept. 30, 1886 11,011
For 2 years ending Sept. 30, 1888 (2 Circuits not reported) 8,572
For 2 years ending Sept. 30, 1890 12,794
For 2 years ending Sept. 30, 1892 (1 Circuit not reported each year) 12,453
For 2 years ending Sept. 30, 1894 11,694
For 2 years ending Sept. 30, 1896 12,118
For 2 years ending Sept. 30, 1898 11,210
For 2 years ending Sept. 30, 1900 10,215
For 2 years ending Sept. 30, 1902 13,388
For 2 years ending Sept. 30, 1904 11,574
For 2 years ending Sept. 30, 1906 13,616
For 2 years ending Sept. 30, 1908 20,672

During the two years covered by this report there were 657 cases of homicide disposed of in the State; of this number there were 186 convictions for murder in the first degree; 189 for murder in the second degree; 114 for manslaughter in the first degree, and 45 for manslaughter in the second degree. No convictions were secured in 123 cases. The general percentage of convictions in homicide cases, including all degrees, is 81.

From October 1, 1906 to October 1, 1908, 380 convicts, sentenced for murder in the first degree, murder in the second degree and manslaughter in the first degree, were received at the State penitentiary. (Manslaughter in the second degree is punishable only by fine and hard labor for the county, and manslaughter in the first degree may be punishable at hard labor for the county, at the discretion of the court, when the sentence is not over two

years.) Of this number, 84 were whites and 296 were negroes. That is 78 per cent of the State homicide convicts for the two years were negroes and 22 per cent were whtes. (The census of 1900 shows a population in Alabama of 1,828,697, of whom 827,307 were negroes, the percentage of whites being 55; of negroes, 45.) There were, during this time 16 white and 81 negro convicts sentenced for murder in the first degree and given terms for life; 31 white convicts were sentenced for murder in the second degree and given an average sentence of 19.2 years, and 136 negro convicts were sentenced for murder in the second degree and given an average sentence of 18 3/8 years; there were 37 white convicts sentenced for manslaughter in the first degree and given an average sentence of 4¼ years, and 79 negro convicts for the same offense and given an average sentence of 4¾ years. During this period there were 154 persons (white and negro) convicted of manslaughter in the two degrees and sentenced to hard labor for the county.

The number of cases of homicide disposed of during the two years covered by this report is 12 less than the number for the preceding two years. The number disposed of during the latter period was almost double the number for the two years ending September 30, 1904. There seems to be no appreciable improvement for the period ending Sept. 30, 1908, in the record of homicides.

Reported death sentences appear to be on the decrease. With 11,933 convictions during this period of two years, only 14 death penalties have been recorded; 13 of the 14 were for murder in the first degree and 1 for rape. While, during the biennial period of 1902-04, with 6,854 convictions, there were 42 death sentences enrolled, and during the next succeeding period—1904-6—with 7,954 convictions, the number of sentences to death was 36. Thus it would appear that the death penalty is waning in popular favor with the juries throughout the State.

THE NUMBER OF CASES OF HOMICIDE DISPOSED OF DURING THE 16 YEARS FROM OCTOBER 1, 1892 TO OCTOBER 1, 1908.

For 2 years ending Sept. 30, 1894.....306
For 2 years ending Sept. 30, 1896.....377
For 2 years ending Sept. 30, 1898.....402
For 2 years ending Sept. 30, 1900.....394
For 2 years ending Sept. 30, 1902.....491
For 2 years ending Sept. 30, 1904.....338
For 2 years ending Sept. 30, 1906.....669
For 2 years ending Sept. 30, 1908.....*657*

During the two years covered by this report, the offense of abusive language appears to have been predominant, 1,957 cases having been disposed of; of this number there were 1,063 convictions. During the same period there were 1,762 cases of concealed weapons disposed of, with 1,184 convictions; there were also 1,294 cases of assault and battery with weapons, with 860 convictions.

The crimes of burglary, robbery and larceny in both degrees foot up 2,491 cases with 1,660 convictions; 612 sentences being to the penitentiary, 626 to hard labor, and 422 to jail or by fine imposed. It is observed by comparison that there was an increase of 431 cases over the preceding two years and an increase of 118 convictions.

From a consideration of the figures shown in the general statement, it appears that the principal increase was, in the order named, in the offenses of violating prohibition laws, abusive language, assault and battery, concealed weapons and gaming.

The most decided increase is in violations of the prohibition laws. For the two years ending September 30, 1906, there were 651 cases disposed of, with 378 convic-

tions. For the similar period covered by this report there were 1,523 cases, with 820 convictions.

The increase in the total number of cases of public drunkenness was 508, with an increase of 359 in the number of convictions.

The discussion of the cheapness of human life and the pernicious practice of carrying concealed weapons continues in Alabama,—in the editorial columns of the press, from the bench, in the proceedings of the State Bar Association and by many intelligent and patriotic citizens, but the "carnival of the man slayer" goes on uninterrupted and unabated, and the deadly hip-pocket pistol, the companion of probably over 50 per cent of our homicides, continues to contribute its full share to the murder records of the State. It is to be deplored that officially compiled statistics show that one person in every seven thousand in Alabama dies yearly as the result of gunshot wounds as against an average for the United States of one person to seventeen thousand. And it is small comfort to compare the record of total homicide and concealed weapon cases of the last period with that of this period. While there were 12 less homicide cases, during this period, the comparison will also show an increase of 624 in concealed weapon cases for this period over the last.

It was unfortunate that it became necessary for the Supreme Court to declare the John's pistol law invalid, and it will be a greater misfortune to the people of the State if the Legislature should fail to enact an effective law for the punishment and suppression of this evil. As an active cause, in my judgment, it does more to cheapen human life in Alabama than all other agencies combined. I hesitate to proffer a remedy when so many suggestions have already been made. The effectiveness of any law depends upon the heart and the conscience of

the people. It seems they are aroused on this subject and regard the frequent occurrence of homicide and the concealed weapon as a positive moral and material drawback to our civilization and a reflection upon the ideals and standards of our citizenship. After all, if we but place the bulwark of public sentiment behind our present laws against murder and concealed weapons, the juries of the land will soon wipe the blood stains from the fair name of our beloved State. At last the remedy lies with the people.

> "When a man suffers that which he hath done
> Then upright Justice shows herself."

The general percentage of convictions in cases disposed of for the past two years throughout the State is 58, practically the same as the percentage for the period next preceding this one.

The percentage of convictions in the several Circuit and Criminal Courts ranges from 30 to 86 as will appear by reference to the several tabulated statements which show the records of the solicitors separately.

Of the total number of 20,672 cases reported, 6,005 were not tried, being either dismissed, withdrawn or abated. Add to this number, the 2,734 acquittals, and it will be noted that 8,739 prosecutions were instituted, and for some reason the testimony was not sufficient to convict. The remedy is with solicitors and grand juries to find indictments only on ample and sufficient evidence and with the courts to place defendants on trial more promptly.

RELATION OF INTOXICATING LIQUORS TO HOMICIDES.

Prompted by the prominence given the sale of intoxicating liquors by the passage of the General Prohibition Law at the Special Session of the Legislature in November, 1907, and the alleged criminal effect of their use, I addressed letters to the solicitors of the State, in the summer and fall of 1908, requesting them to forward me certain data concerning homicide cases, during the two years covered by this report, for the purpose of ascertaining the race of the defendants and the approximate percentage of the homicide cases in which the defendant or the deceased had been drunk or drinking at the time of the killing.

Most of the solicitors responded and furnished the data requested, several were unable to give definite and detailed information covering each case, and a few did not respond. Reports were received from about 45 counties. The percentage of cases attributable to whiskey or other intoxicating drink ranges in the different counties from 7 1/7 to 100. The total number of cases reported was 368. In 194 cases, the defendant or the deceased was drunk or drinking at the time of the homicide, and in 174 cases there was no evidence of any intoxicating drink at the time of the homicide.

The following statement shows the data by counties in the cases reported:

Colored	White		Liquor	No Liq.	Liq. Percent
2	1	Autauga	1	2	33 1/3
2	1	Baldwin	1	2	33 1/3
	1	Blount	1	--	100
3	2	Butler	--	--	------
10	3	Calhoun	8	5	61 7/13
3	2	Chambers	4	1	80
1	2	Chilton	--	--	------
3	--	Choctaw	2	1	66 2/3
14	3	Clarke	10	7	59.8
1	2	Clay	3	--	100
--	1	Cleburne	1	--	100
--	1	Coffee	1	--	100
7	1	Colbert	3	5	37 1/2
4	5	Conecuh	--	--	------
1	--	Coosa	--	--	------
12	4	Covington	10	6	62 1/2
3	4	Crenshaw	--	--	------
5	3	Dallas	4	4	50
2	4	DeKalb	1	5	16 2/3
11	8	Elmore	2	17	10.5
1	1	Escambia	--	--	------
5	18	Etowah	14	9	61
--	2	Fayette	--	2	------
2	1	Franklin	2	1	66 2/3
5	3	Geneva	6	2	75
6	--	Greene	2	4	33 1/3
1	--	Hale	--	1	------
--	1	Henry	1	--	100
5	5	Houston	7	3	70
--	1	Lamar	1	--	100
8	1	Lauderdale	9	--	100
9	1	Lee	--	--	------
5	4	Lowndes	--	--	------
4	--	Macon	1	3	25

Colored	White		Liquor	No Liq.	Liq. Percent
2	7	Madison	4	5	44
17	2	Marengo	12	7	63
19	7	Mobile	7	19	27
8	--	Monroe	7	1	87 1/2
21	3	Montgomery	3	21	12 1/2
1	--	Morgan	1	--	100
2	1	Pickens	--	--	------
5	4	Pike	8	1	89
1	2	Randolph	--	--	------
10	6	Shelby	11	5	69
4	2	St. Clair	4	2	67
12	2	Sumter	1	13	7 1/7
16	5	Talladega	15	6	71
10	4	Tallapoosa	6	8	43
12	2	Tuscaloosa	9	5	64
3	1	Walker	4	--	100
3	--	Washington	3	--	100
--	5	Winston	4	1	80
280	139		194	174	

Colored percentage, 67.8; liquor percentage, 53.

Note: The Circuit Solicitor reported that in the counties of Butler, Conecuh, Crenshaw, Escambia and Lowndes, liquor was the contributing cause in 70 per cent of the homicide cases during this period.

CRIMINAL APPEALS TO THE SUPREME COURT.

During the two years ending September 30, 1908 (Nov. Terms 1906-7 and 1907-8) 314 cases were brought to the Supreme Court for review; of this number 209 were affirmed or dismissed and 105 reversed.

The following comparative statement is submitted to show the volume, during recent years, of this character of business in the Supreme Court:

In 1885-86, 148 appeals, 90 affirmed or dismissed, 58 reversed. Percentage of reversals, 39.

In 1887-88, 117 appeals, 72 affirmed or dismissed, 45 reversed. Percentage of reversals ,38.

In 1889-90, 189 appeals, 110 affirmed or dismissed, 79 reversed. Percentage of reversals, 42.

In 1891-92, 185 appeals, 112 affirmed or dismissed, 73 reversed. Percentage of reversals, 39.

In 1893-94, 230 appeals 124 affirmed or dismissed 106 reversed. Percentage of reversals 46.

In 1895-96, 263 appeals, 158 affirmed or dismissed, 105 reversed. Percentage of reversals, 40.

In 1897-98, 231 appeals, 150 affirmed or dismissed, 81 reversed. Percentage of reversals, 35.

In 1899-1900, 189 appeals, 134 affirmed or dismissed, 54 reversed. Percentage of reversals, 28.

In 1901-02, 225 appeals, 163 affirmed or dismissed, 62 reversed. Percentage of reversals, 28.

In 1903-04, 253 appeals, 164 affirmed or dismissed, 89 reversed. Percentage of reversals, 35.

In 1905-06, 292 appeals, 184 affirmed or dismissed, 108 reversed. Percentage of reversals, 36.

In 1907-08, 314 appeals, 209 affirmed or dismissed, 105 reversed. Percentage of reversals, 33.

REVERSALS OF CRIMINAL CASES.

Much has been said in former reports of this Department, and recently in the public prints, with regard to reversals for technical errors in criminal cases. Attorney General William L. Martin, in his report of 1894, discussing this subject said that "more than half of these reversals were upon purely technical questions which did not go to the fairness of the trial or the righteousness of the conviction," and in speaking further of the doctrine of error without injury as not applicable in criminal cases under our practice, he said "such a rule ought, in my judgment, to be abolished; it has no rightful place in a system of jurisprudence designed for the punishment and suppression of crime."

Since 1894 the doctrine of error without injury has been somewhat relaxed by our court under the influence of section 4333 of the Code of 1896—now section 6264 of the Code of 1907—but the statute is yet so strictly construed by the court that it does not meet the purpose for which it was designed. The last clause of this section of the Code, (6264) should be amended so as to read, (new matter in italics): "The judgment of conviction must not be reversed because of error in the record *unless* the court is satisfied that injury resulted therefrom to the defendant." This change would require the court to say *affirmatively* that injury resulted to the defendant, whereas, under the present statute the court must be satisfied that "no injury resulted therefrom to the defendant,"—a conclusion difficult to reach.

I also call attention to the practice of giving special charges to the jury at the instance of the defendant. Where the proposition embodied in the special charge is covered by the general charge, the former, if correct,

must also be given under the present practice, otherwise the case will be reversed. In the average criminal case such charges have but little influence with the jury, and I am convinced that this practice as to special charges should be abolished entirely, or at least modified to this extent:

The judgment should not be reversed for the refusal of a special charge requested by appellant if the proposition embodied in such charge is substantially covered by the oral charge of the court, and that no case be reversed unless it affirmatively appears from the record that the trial court failed or refused to charge the jury upon the proposition embodied in the refused charge.

CRIMINAL CASES IN U. S. SUPREME COURT.

In the cases of Bailey vs. State, 48 So. 498; Dozier vs. State, 154 Ala. 83, and Compton vs. State, 152 Ala. 68, the defendants sued out writs of error from the Supreme Court of the United States.

In the Bailey case the defendant was charged with violating the so called labor law (Code of 1907, sec. 6845). The State Supreme Court denied his discharge, and the Supreme Court of the United States dismissed the writ of error, holding that the constitutionality of the law would not be considered in the habeas corpus proceeding (211 U. S. 452). Bailey was afterwards convicted, and judgment of conviction was affirmed by the State Supreme Court (49 So. 886), and the defend-

ant has sued out a writ of error in this case to the Supreme Court of the United States, which is still pending.

In the Compton case the defendant was arrested on extradition warrant and affidavit charging him with the commission of an offense in Georgia; he sought his discharge on habeas corpus. The petition was denied both in the State Supreme Court and in the Supreme Court of the United States (214 U. S. 1).

The Dozier case involves the license tax imposed on agents soliciting orders for the enlargement of pictures. The law was sustained by the State Supreme Court, and the case is pending on writ of error in the Supreme Court of the United States.

ATTORNEY GENERAL—MEMBER OF STATE BOARDS.

The Attorney General, under the present statutes, is a member of the Board of Pardons, the Board of Compromise, for the adjustment of claims in favor of the State (Sec. 2441 of the Code), and the Board of Compromise for the examination of claims of the State to school lands (Sec. 1804 of the Code). He is also required to attend the meetings of the Board of Assessment to represent the interest of the State and to cast a vote when the members are equally divided upon any question.

The board duties thus assigned to the Attorney General, all of which relate to important subjects of State interest, draw heavily upon his time.

The adjustments before the State Board of Compromise, composed of the Governor, the Attorney General and the Auditor, have materially increased since the amendment (of 1907) of the record mortgage law, re-

quiring the board to ascertain the proportion of the indebtedness secured, upon which the tax shall be paid when the property embraced in the instrument is located in several states. In compliance with this statute (Sec. 2082, subdivision 7, paragraph G of the Code), the Board of Compromise has rendered many decrees during this biennial period.

Under section 2240 of the Code of 1907, the Attorney General is made the attorney of the State Tax Commission in all legal proceedings instituted by or against it; and likewise, under section 5723 of the Code of 1907, he is required to represent the Railroad Commission in all legal proceedings instituted by or against that Commission.

The gradual growth in the volume of business in this office and the many additional duties imposed by recent laws upon the Attorney General will necessitate, in the near future, an increase in the office force of this Department.

UNOFFICIAL OPINIONS.

I am forced to conclude from my experience that many citizens of Alabama do not correctly understand the authority and duties of the Attorney General, otherwise the drafts made upon him for unofficial advice would not prove so unreasonable. He is appealed to upon all imaginable subjects, both of a private and public nature. I have uniformly declined to express any opinion upon questions pertaining to purely personal and private matters. During the two years covered by this report the unofficial communications sent out to the various county and municipal officers and to citizens submitting questions of a public nature, fill over one thousand pages in the letter files of this Department. It is

not improper to emphasize here that neither a local officer nor a private citizen, under the law of this State, has any right, whatever, to call upon the Attorney General for advice. Whenever I have been able to do so without undue interference with official matters, I have delivered opinions or given advice upon those subjects propounded through unofficial sources which were of general public concern. While the statute constitutes me legal adviser only to State officials, State Boards and Commissions, I have considered it best, on grounds of public welfare, and owing to the fact that many local officers have no legal adviser—deeming it my duty to serve the people of the State so far as I may be able—to answer many of these communications, especially in view of the many new statutes enacted by the present Legislature. A law-abiding citizen, whether as officer or individual, seeking to know what the law is, that he may obey its mandate, has always appealed to me most strongly. In this connection I would suggest the advisability of some legislation providing a legal adviser for all county officers.

The Attorney General should be allowed, unhampered and unhindered, to devote his entire time to the increased volume of business of this Department. His *official* work should be his sole concern, if he would discharge fully and successfully the duties assigned to him under the statute.

OFFICIAL OPINIONS.

On account of the numerous questions arising with respect to the interpretation of the various newly enacted statutes and a growing disposition on the part of State officials to follow strictly the line of duty prescribed by law, frequent demands have been made upon the Attorney General for assistance in construing the

statutes relating to the jurisdiction and work of their respective Departments. This has resulted in a considerable increase in the number of official opinions.

Much time and thought have been devoted to this feature of the Attorney General's work. I have included in this report only those opinions rendered during the biennial period which I consider of general public interest. They number 120. This number embraces only a minor portion of the opinions delivered to the different State officers, under subdivision 1, sec. 635 of the Code. The total number will exceed 500.

RECOMMENDATIONS.

It was at first contemplated to incorporate herein several important suggestions concerning needed changes in some of the school and insurance laws and a recommendation with reference to a uniform jury law. Before this report was placed in the hands of the printer, the Governor issued a call for an extraordinary session of the Legislature and these suggestions were embodied therein on my recommendation, and will not be taken up here, but treated later in my next biennial report.

In addition to the suggestions heretofore noted recommending certain remedial legislation, I beg to submit the following recommendations:

1. Section 6855 of the Code should be repealed. This section was enacted in 1867 and has been carried forward in every Code since that date. It attempts to punish an immigrant for leaving the services of an employer without repaying passage money and other advances. Fraud is not made an element of the offense and the statute is clearly unconstitutional and an attempt to imprison for debt, as well as being violative of the present

Federal Immigration Acts. The reports made to this office do not show that any prosecution has ever been instituted for a violation of this statute; but the fact of its presence in the Code, has subjected the State to the severest criticism, and may have, and probably has already had, a serious effect in preventing immigrants from coming to Alabama; whereas, it is now, and has been for many years the policy of the State to invite immigration from other States as well as from foreign countries .

2. A statute should be passed providing that where a defendant, indicted for murder in the first degree, has been convicted of a lower degree of homicide, and the judgment of conviction reversed by the Supreme Court, he shall be placed upon trial as in the first instance, for the highest degree of murder charged in the indictment. The purpose of this suggestion is to abolish that rule of decision, that a conviction of a lower degree of homicide than that charged in the indictment is an acquittal of the higher degrees. A law of this character in Missouri was held constitutional by the Supreme Court of the United States in Kring v. Mo., 107 U. S. 221.

3. For a number of years the Attorney General's report has contained the recommendation that burglary in the night-time be made a capital felony. I also submit this recommendation in the hope that the Legislature will take some action thereon, and at least provide for a higher punishment for this offense.

4. Subdivision 5 of section 635 of the Code should be amended so as to require the Attorney General to make his report to the Governor in the month of December of each even numbered year, thereby giving him the opportunity to report at the close of his term of office.

5. Under the statute, the State officials are protected when following the opinion of the Attorney General. These opinions cover a period of many years, and embrace a great variety of questions, many of which are constantly recurring. Many points decided have never been presented to the Supreme Court for adjudication. At present these opinions are of little practical value as precedents for the guidance of heads of State Departments, as most of the reports of the Attorneys General in which they are printed have not been preserved. It is difficult at present to obtain a complete set of these reports. I recommend the publication of all official opinions of former Attorneys General on questions of general interest and importance, under the supervision of the Attorney General, in a volume of the size and style of the Alabama Reports and in such number as may be deemed advisable.

6. This is the era in criminology "when justice has come to be seasoned by mercy and humanity," and I am in accord with the high-minded effort to keep pace with an advanced civilization, which has resulted in our present procedure for the trial of the alleged *criminal insane*. Yet, I am one of those who hold the opinion that the present practice of submitting the special plea of not guilty by reason of insanity, along with the general issue of not guilty, and trying both at the same time, has been a failure oftener than a success in accomplishing the humane purposes of the framers of this system. It is now perverted frequently from its true use into an instrument of defense in a class of homicides never contemplated. Technically, evidence on the issue of insanity should not be considered by the jury in passing on the issue of guilt *vel non*. As a rule, the special plea is supported by a great mass of evidence which has no field of operation or relevancy under the general issue, and only serves to confuse the minds of the jury in reaching

a verdict under this latter plea. It is absolutely impossible to expect a jury, as a human agency in the administration of the criminal law, to separate the facts adduced under each separate plea, yet the law requires this impossibility at the hands of the jury. Thus, the special plea of insanity often becomes a shield for the murderer and results in a shocking miscarriage of justice. The present system, as provided by sections 7176 and 7177 of the Code, should be changed so that the two issues may be tried separately, and if the jury should find in favor of the defendant's sanity, he may be then tried for the crime, and in this manner eliminate in the latter trial all evidence on the question of sanity.

7. There is no adequate anti-trust statute in this State. Sections 7579 to 7582, inclusive, of the Code contain the only law on this subject, and so far as I can learn has never been invoked, if, indeed, they could be effectively made to meet any practical case. Almost every state has an adequate statute to meet and cope with modern conditions with respect to trusts and unlawful combinations in restraint of trade. I recommend the adoption of a law on the general line of the Federal Anti-trust Statutes.

8. The State Tax Commission, composed of three members informed and trained by experience in tax matters, has been clothed with extensive powers and jurisdiction in the assessment of the different subjects of State taxation. I recommend that sections 2133 et seq. relating to the duties of the State Board of Assessment, be either amended or repealed, and that the duties imposed therein upon the State Board of Assessment, be placed upon the State Tax Commission.

9. A study of the legislative events during my incumbency in office has convinced me that the public interest will be conserved by a return to biennial sessions of the Legislature.

CONCLUSION.

In closing this general review of the work of the past two years, it is most gratifying to record the cordial relations and the spirit of co-operation which have existed between this office and your Excellency and all other State officers.

This record would be incomplete, if I did not also express my appreciation of the fidelity of my co-worker, Assistant-Attorney General Thomas W. Martin, and the capable and efficient manner in which he has assisted me in discharging the arduous duties of the office.

Respectfully submitted,

ALEXANDER M. GARBER,
Attorney General.

II

CIVIL CASES

PENDING AND DISPOSED OF

FROM

OCTOBER 1, 1906 TO OCTOBER 1, 1908.

II.

CIVIL CASES

Pending and Disposed of From October 1, 1906, to October 1, 1908.

The State of Alabama, ex rel Massey Wilson, Attorney General, v. Alabama Western Railroad Company.
In the City Court of Birmingham.

This was a bill in equity instituted in the City Court of Birmingham, October, 1906, at the instance of certain property owners in the city of Birmingham, to require the defendant to remove an obstruction, viz: A depot which had been erected across Fifteenth street. The proceeding was revived in the name of Alex. M. Garber, as Attorney General in January, 1907. The lower court overruled the demurrer to the bill from which the defendant appealed to the Supreme Court, and the decree was affirmed. 46 So. 468. After the institution of this suit the Legislature, by the Act approved July 31, 1907 (Local Acts 1907, p. 644), vacated the dedication of the street or alley across which the structure had been erected and, thereafter, the case was dismissed.

The State of Alabama, v. Alabama Cordage Company and National Surety Company.
In the City Court of Montgomery.

This suit was instituted by the State on November 2nd, 1906, to recover the amount due by the Cordage Company for the hire of convicts. The claim was settled by the payment to the State on the 31st day of December, 1906, of $2,341.72.

The State of Alabama v. J. A. Ridley, former Tax Collector of Jackson County.

This matter involved an alleged balance due by Mr. Ridley according to the report of State Examiner Sedberry. Mr. Ridley disputed the correctness of Mr. Sedberry's report, and the matter was adjusted and settled by the State Board of Compromise for $900.00, which amount was paid into the State Treasury on the 23rd day of July, 1907, by Mr. Ridley.

Manhattan Trust Company v. J. B. Gaston, Judge of Probate.
In the City Court of Montgomery, in Equity.

The bill in this case was filed to enjoin the Probate Judge of Montgomery County from paying over to the State Treasury the sum of three thousand dollars paid by the complainant as the mortgage tax on a mortgage or dee dof trust. At the same time a suit was instituted in the City Court of Montgomery on the law side of the docket to recover the amount of this mortgage tax, the contention in both cases being that the statute under which the tax was collected was unconstitutional. The law case was decided by the lower court in favor of the defendant and the Supreme Court affirmed this judgment. (46 So. 1038), and the equity suit was subsequently dismissed, the questions there raised having been decided in the law case. The amount involved $3,000.00 has been paid into the State Treasury.

Central Trust Company v. S. E. Greene, Judge of Probate.

In the City Court of Birmingham, in Equity.

This case also involved the constitutionality of the privilege tax on recorded mortgages and was decided adversely to the complainant by the Supreme Court. (44 So. 540.) The amount involved, $1,111.72, has been paid into the State Treasury.

Louisville & Nashville R. R. Co. v. J. M. Robinson, Jr., Judge of Probate.

In the Circuit Court of Covington County.

This case also involved the constitutionality of the privilege tax on recorded mortgages. Upon the institution of the suit it was agreed that it would abide the decision in these cases, this case has been dismissed and the amount involved, $600.00, has been paid into the State Treasury.

SYNOPSIS OF THE RAILROAD RATE CASES.

RAILROAD SUITS PENDING IN THE UNITED STATES CIRCUIT COURT AT MONTGOMERY, ALABAMA, AGAINST THE RAILROAD COMMISSION OF ALABAMA AND THE ATTORNEY GENERAL.

Suits were instituted in the United States Circuit Court for the Middle District of Alabama, by the following railroad companies on March 25, 1907: Louisville & Nashville R. R. Co., South & North R. R. Co., Western Ry. of Alabama, Atlantic Coast Line R. R. Co., Central of Georgia Ry. Co., Nashville, Chattanooga & St. Louis Ry. Co., Alabama Great Southern R. R. Co., Southern Ry., Mobile & Ohio R. R. Co., Atlanta, Birmingham & Atlantic R. R. Co., Seaboard Air Line R. R. Co., and the Kansas City, Memphis & Birmingham R. R. Co. The purpose of these suits was to prevent the enforcement of the various rate statutes and certain other acts regulating railroads, enacted by the Legislature of Alabama in 1907. After the institution of these suits a compromise and adjustment was made between the State and the Southern Ry. Co., the Mobile & Ohio R. R. Co., the Alabama Great Southern R. R. Co., the Atlantic Coast Line R. R. Co., the Atlanta, Birmingham & Atlantic R. R. Co., the Seaboard Air Line Railroad Company and the Kansas City, Memphis & Birmingham R. R. Co., by the terms of which, the companies agreed to put into effect the statute rates of Alabama and to dismiss the bills filed by them, and this agreement was carried out. The other original complainants, L. & N. R. R. Co., S. & N. Ala. R. R. Co., Central of Ga. Ry. Co., Western of Ala., and the N. C. & St. L. Ry., declined

to make any adjustment of the matter and those suits are still pending. In addition, the Central Trust Company of New York afterwards filed a bill against the Central of Georgia Railway Company in which the Railroad Commission of Alabama, the sheriffs, solicitors and clerks were made parties defendant. Supplemental bills were also filed by the original complainant companies, making the sheriffs, solicitors and clerks defendants to their several bills. Various hearings have been had and decrees made in the causes which it is impossible in a brief synopsis to set forth. The court decided the preliminary questions in the cases on March 21, 1908 (161 Fed. 925). The principal questions involved were decided, against the defendants, and injunctions *pendente lite* were granted as prayed by complainants. Appeals were taken to the Circuit Court of Appeals of the Fifth Circuit, by defendants (the State), where on April 5th, 1909, the injunctions were dissolved in all the cases. 169 Fed. —.

Louisville & Nashville R. R. Co. v. Railroad Commission of Alabama.

In the Circuit Court of the United States, for the Middle District of Alabama.

This proceeding grows out of the local act of Feb. 5, 1903, p. 771, requiring the railroad companies entering Mobile to provide for the construction of a union passenger depot in that city. The railroad companies having failed to provide for the construction of the depot, the Railroad Commission made an order to that end, and the depot was thereafter erected by the Gulf Terminal Company, a subsidiary corporation of the Mobile & Ohio Railroad Company. Upon its completion, the Railroad Commission directed the railroads entering

that city to use the union depot. The Louisville & Nashville Railroad Company refused to do so, and filed its bill in the United States Court on the 20th day of July, 1908, to enjoin the enforcement of this order. This suit is still pending.

The State of Alabama, ex rel, Alex. M. Garber, Attorney General v. Louisville & Nashville R. R. Co.

In the City Court of Montgomery, in Equity.

The bill in this case was filed on the 23rd day of July, 1907, to require the railroad company to remove its freight depot from the foot of Lee Street, in the City of Montgomery. The lower court dismissed the bill and this decree was affirmed on appeal. 48 So. 391. (See letter of Sept. 24 ,1907, in re this proceeding to Messrs. J. F. Walker, R. M. Hobbie, et al., on a subsequent page of this report.)

Price Williams, Jr., Judge of Probate, of Moble County v. W. W. Brandon, State Auditor.

In the City Court of Montgomery.

This was a mandamus proceeding instituted on August 2, 1907, to require the Auditor to pay over to the petitioner the sum of $3,343.74, alleged to be due the tax officers of Mobile County on account of certain sales of tax lands in that county. The lower court directed the Auditor to pay over to the petitioner $2,500.00. From this judgment the state appealed to the Supreme Court and the judgment of the lower court was reversed and the petition dismissed. 46 So. 199. A second suit was then instituted on the same cause of action and was decided in favor of the plaintiff, by the City Court of Montgomery, from which judgment the State appealed to the Supreme Court. This appeal is pending.

Great Western Life Insurance Company v. Frank N. Julian, Secretary of State.

In the City Court of Montgomery.

This was a mandamus proceeding instituted on September 3rd, 1907, to require the Secretary of State to grant to the Insurance Company authority to transact its business in the State of Alabama. Such authority had been refused on the ground that the company proposed to engage in business in violation of section 2602 of the Code of 1896, known as the ante-rebate statute. The prayer of the petition was granted, the court holding in effect that the insurance policy did not violate the section mentioned.

Railroad Commission of Alabama v. Central of Georgia Ry. Co.

In the City Court of Montgomery.

Two suits were instituted by the Railroad Commission, one at law and the other in equity, the equity suit seeking to require the defendant company to comply with an order of the Railroad Commission relative to hauling and compressing cotton at Union Springs. The bill was dismissed by the court below and this judgment was affirmed on appeal. 49 So. 237. In the law case the plaintiff sought to recover penalties for the violation of this order, and the court having held the order of the railroad commission void, the penalty suit was then dismissed.

FOREIGN CORPORATION FRANCHISE TAX CASES.

The act of March 7, 1907 (Gen. Acts 1907, p. 418) required foreign corporations authorized to do business in this State to pay an annual franchise tax. The va-validity of this statute was tested by the Southern Railway Co., Central of Georgia Ry. Co., the Seaboard Air Line, through Warfield, et al., receivers, the Louisville & Nashville R. R. Co., Atlantic Coast Line R. R. Co., and the Nashville, Chattanooga & St. Louis Ry. The companies named paid taxes under protetst and sued to recover the same. The validity of the statute was sustained by the lower courts and by the Supreme Court of Alabama. See Southern Ry. Co. v. Greene, 49 So. 404. The appellant railroad companies prosecuted error to the U. S. Supreme Court, where the cases are now pending.

The following amounts were collected for the year 1908:

Louisville & Nashville R. R. Co.	$23,659.82
Atlantic Coast Line R. R. Co.	6,243.00
Central of Georgia Ry. Co.	11,371.44
Seaboard Air Line Ry.	1,703.44
Southern Ry. Co.	22,458.26
Nashville, Chattanooga & St. L. Ry.	3,005.43
Total tax paid under protest for 1908	$68,441.39

The following amounts were collected for the year 1909:

Louisville & Nashville R. R. Co.	$24,027.29
Atlantic Coast Line R. R. Co.	6,258.11
Central of Georgia Ry. Co.	11,371.44

Seaboard Air Line Ry.	1,704.38
Southern Ry. Co.	22,138.15
Nashville, Chattanooga & St. L. Ry.	3,004.69
Total tax paid under protest for 1909	$68,504.06
Total tax paid for the two years	$136,945.45

The State of Alabama v. Goodyear Raincoat Company.
In the City Court of Montgomery.

This was a suit instituted on the 18th day of March, 1908, to recover the amount of the franchise tax alleged to be due by the defendant as a foreign corporation. After the institution of the suit it appeared that the defendant was a partnership and not a corporation, and the suit was dismissed.

The State of Alabama v. Capitol Brewing & Ice Co.
In the City Court of Montgomery.

This was a suit instituted by the State on June 3rd, 1908, to recover license taxes alleged to be due the State of Alabama, and the County of Butler. The lower court decided against the State, and this judgment was affirmed on appeal. 49 So. —.

The State of Alabama v. H. H. Cooper, Tax Collector of Baldwin County and U. S. Fidelity and Guarantee Co. Surety.
In the City Court of Montgomery.

This was a suit instituted on the 25th day of September, 1908, to recover the sum of $3,769.28 alleged to be due the State on account of tax collections. This case was adjusted and settled by the State Board of Compromise and the cause dismissed on payment to the State of $3,500.

Railroad Commission of Alabama v. Louisville & Nashville R. R. Co. et al.
Before the Interstate Commerce Commission.

This proceeding was instituted in 1908, in the interest of the shipping public to prevent the various railroad companies operating in this State from putting into effect published increases in rates on packing house and grain products. The cause is still pending before the Interstate Commerce Commission.

The State of Alabama v. Louisville & Nashville R. R. Company.
In the City Court of Montgomery.

This was a suit instituted by the State on December 11th, 1908, to enforce an order of the Railroad Commission requiring the defendant company to construct a freight platform and side track at Corduroy Crossing in Monroe County, Alabama. The case is still pending.

State of Alabama v. Carroll P. Houghton .

The register of the land office at Montgomery rejected the application of the State selecting certain lands under grant by Congress to the Girls' Industrial School. From this rejection the State appealed to the Commissioner of the general land office at Washington, on May 13, 1908, and this appeal is now pending.

III–A

GENERAL STATEMENT

SHOWING CHARACTER AND RESULTS OF PROSECUTIONS IN THE ENTIRE STATE FOR TWO YEARS ENDING SEPT. 30, 1908.

III—(A.)

GENERAL STATEMENT.

Showing Character and Results of Prosecutions in the Entire State for Two Years Ending September 30th, 1908.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured
						Death	Penitentiary	Hard Labor	Jail	
Abandonment	22	5	6	11	----	----	----	----	----	5
Abduction	4	------	------	3	1	----	----	----	----	----
Abortion	1	------	------	------	1	----	----	----	----	----
Abusive language	1957	1063	249	562	83	----	----	131	24	901
Accessory after the fact	1	1	------	------	----	----	----	----	----	1
Adultery and Fornication	356	157	38	146	15	----	----	29	4	125
Affray	74	56	8	10	----	----	----	6	----	50
Allowing minor to play pool	34	9	7	18	----	----	----	4	----	5
Aiding escape	9	4	------	5	----	----	----	3	----	1
Altering mark	6	------	3	3	----	----	----	----	----	----
Arson, first degree	9	4	1	4	----	----	4	----	----	----
Arson, second degree	26	12	4	10	----	----	10	2	----	----
Arson, third degree	9	5	3	1	----	----	----	1	----	4
Assault	147	91	18	31	7	----	----	7	1	83

Assault and battery	1834	1054	283	416	81	----	----	211	10	826
Assault and battery with weapon	1249	860	153	199	37	----	----	179	5	683
Assault, intent to murder	722	433	93	154	42	----	212	109	----	111
Assault, intent to ravish	70	37	6	20	7	----	29	8	----	----
Assault, intent to rob	8	4	2	2	----	----	2	1	----	1
Attempt at arson	2	1	------	1	----	----	----	----	----	1
Attempt at carnal knowledge	2	1	1	------	----	----	1	----	----	----
Attempt to commit a felony	12	10	1	1	----	----	----	2	----	8
Attempt at crime against nature	1	1	------	------	----	----	----	1	----	----
Attempt at escape	1	------	------	1	----	----	----	----	----	----
Attempt at larceny	7	5	1	1	----	----	----	3	----	2
Attempt at poison	2	------	1	------	1	----	----	----	----	----
Betting on election	30	1	18	11	----	----	----	----	----	1
Betting at cards	14	7	------	6	1	----	----	----	----	7
Betting at pool	1	1	------	------	----	----	----	----	----	1
Betting with minor	1	1	------	------	----	----	----	----	----	1
Betting in public places	7	------	1	6	----	----	----	----	----	----
Bigamous co-habitation	1	1	------	------	----	----	1	----	----	----
Bigamy	31	13	4	7	7	----	10	3	----	----
Boarding a moving train	1	1	------	------	----	----	----	----	----	1
Breaking fence	5	3	1	1	----	----	----	----	----	3
Bribery	5	------	2	2	1	----	----	----	----	----
Burglary	414	318	42	67	17	----	192	105	3	----
Burglary and grand larceny	163	97	17	36	13	----	56	39	*	----
Burglary, grand larceny and receiving stolen goods	2	1	------	1	----	----	1	----	----	----
Burglary in railroad car	5	2	------	3	----	----	2	----	----	----
Burglary and arson second degree	2	2	------	------	----	----	2	----	----	----

GENERAL STATEMENT.—Continued.

CHARACTER OF OFFENSE.	No. of cases disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or withdrawn	No. of sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Buying liquor for minor	1	------	------	1	----	----	----	----	----	----
Buying seed cotton	1	------	1	------	----	----	----	----	----	----
Carnal knowledge, girl under ten	4	1	------	2	1	----	1	----	----	----
Carnal knowledge, girl over ten	10	9	------	1	----	----	6	----	----	3
Carrying pistol under 21 inches in length	1	1	------	------	----	----	----	----	----	1
Carrying rails from land of another	1	------	------	1	----	----	----	----	----	----
Changing name unlawfully	30	13	8	6	3	----	----	8	----	5
Concealed weapons	1762	1184	207	322	49	----	----	290	6	837
Concealing felon	1	------	1	------	----	----	----	----	----	----
Concealing stolen property	2	1	------	1	----	----	----	1	----	----
Conspiracy	14	3	7	4	----	----	----	----	----	3
Contempt	6	6	------	------	----	----	----	----	4	2
Cutting boat from moorings	1	1	------	------	----	----	----	1	----	----
Cutting timber from land of another	2	------	------	2	----	----	----	----	----	----
Crime against nature	13	8	3	------	2	----	8	----	----	----
Cruelty to animals	46	27	15	4	----	----	----	3	----	24

Decoying child	14	------	9	5	----	----	----	----	----	----
Defacing public buildings	8	3	3	2	----	----	----	1	----	2
Defamation	109	18	40	39	10	----	----	1	----	17
Defaulting bail	1	1	------	------	----	----	----	----	----	1
Defaulting road hand	131	59	24	44	3	----	----	2	----	57
Defaulting witness	2	------	------	2	----	----	----	----	----	----
Destroying fence	3	2	------	1	----	----	----	----	----	2
Disorderly conduct	2	------	2	------	----	----	----	----	----	----
Disorderly house	6	3	------	3	----	----	----	----	----	3
Disturbing religious worship	324	160	66	93	5	----	----	4	----	156
Disposing of liquor near church	1	1	------	------	----	----	----	----	----	1
Discharging firearms unlawfully	1	------	------	1	----	----	----	----	----	----
Disposing of property under lien	48	26	7	15	----	----	----	1	----	25
Discharging gun in passenger train	3	3	------	------	----	----	----	1	----	2
Disturbing females	36	24	1	11	----	----	----	1	----	23
Destroying mile post	1	1	------	------	----	----	----	----	----	1
Disturbing public assembly	2	2	------	------	----	----	----	----	----	2
Disturbing school	8	6	------	2	----	----	----	----	----	6
Disturbing females on railroad train	10	8	------	2	----	----	----	2	----	6
Dynamiting stream	1	------	------	1	----	----	----	----	----	----
Emigrant agent	2	------	1	1	----	----	----	----	----	----
Employing minor to sell liquor	1	1	------	------	----	----	----	----	----	1
Enticing minor	6	2	1	2	1	----	----	----	----	2
Escape	23	7	1	13	2	----	----	5		2
Enticing labor	13	4	1	7	1	----	----	----	----	4
Failing to repair public road	1	------	------	1	----	----	----	----	----	----
False pretense	281	138	37	91	13	----	15	44	8	79

GENERAL STATEMENT.—Continued.

CHARACTER OF OFFENSE.	No. of cases disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or withdrawn	No. of sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
False impersonation	2	2	------	------	----	----	2	----	----	----
False exhibition of cotton sample	1	------	1	------	----	----	----	----	----	----
Fishing in private pond without license	1	------	------	1	----	----	----	----	----	----
Forming trust	1	------	------	1	----	----	----	----	----	----
Forgery, first degree	62	21	5	31	5	----	21	----	----	----
Forgery, second degree	54	33	5	15	1	----	25	4	----	4
Forgery, third degree	30	23	------	4	3	----	----	13	8	3
Fraudulent conveyance	3	1	1	------	1	----	1	----	----	----
Fraudulently packing cotton	2	1	------	1	----	----	----	----	----	1
Gaming	983	651	111	209	12	----	----	91	----	562
Gaming on Sunday	254	185	22	47	----	----	----	26		149
Gaming in public place	7	------	1	6	----	----	----	----	----	----
Giving liquor to minor	17	4	6	7	----	----	----	----	----	4
Harboring girl	1	------	------	1	----	----	----	----	----	----
Hauling on pike without license	14	10	------	3	1	----	----	----	----	10
Horse racing	3	2	------	1	----	----	----	----	----	2

Hunting on Sunday	1	1								1
Injuring telegraph poles	1				1					
Injuring telephone line	1	1								1
Incest	14	4	4	6			4			
Justice of peace, neglect of duty	2			2						
Keeping gaming table	22	4	8	6	4				1	3
Kidnapping	1			1						
Killing hogs unlawfully	7	2	3	2						2
Keeping house of prostitution	11	2	1	6	2			1		1
Keeping false books	1		1							
Keeping sheep-killing dog	2	1		1						1
Keeping chicken-eating dog	1	1								1
Larceny, grand	1120	708	129	225	58		375	286	12	21
Larceny, petit	869	585	92	165	27			231	93	323
Libel	2			2						
Lottery	83	2	1	80						2
Larceny from the person	1		1							
Mayhem	4	2	1	1			2			
Malicious mischief	71	23	18	29	1			4	2	17
Malfeasance in office	2			2						
Manslaughter, first degree	136	114	14	7	1		101	12	1	
Manslaughter, second degree	56	45	6	5			5	18	7	18
Miscegenation	16	14		2			14			
Murder, first degree	392	186	103	82	21	13	173			
Murder, second degree	173	139	21	12	1		139			
Night walking	1	1						1		
Nuisance	2			2						

GENERAL STATEMENT—Continued.

CHARACTER OF OFFENSE.	No. of cases disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or withdrawn	No. of sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Obstructing public justice	10	5	----	4	1	----	----	----	----	5
Obstructing public road	23	4	6	11	2	----	----	----	----	4
Obstructing railroad	2	1	----	1	----	----	1	----	----	----
Obtaining money under false pretense	21	7	8	6	----	----	3	2	2	----
Obtaining board by fraud	3	----	1	2	----	----	----	----	----	----
Operating slot machine	18	16	2	----	----	----	----	----	----	16
Overseer, neglect of duty	2	2	----	----	----	----	----	----	----	2
Perjury	48	6	15	24	3	----	4	2	----	----
Permitting gaming	2	2	----	----	----	----	----	1	1	----
Playing cards on Sunday	15	9	----	4	1	----	----	----	----	9
Playing cards, public place	55	41	2	12	----	----	----	----	1	40
Playing dice, public place	4	4	----	----	----	----	----	4	----	----
Poisoning stream	1	----	1	----	----	----	----	----	----	----
Poisoning well	5	1	----	2	2	----	1	----	----	----
Practicing dentistry without a license	2	2	----	----	----	----	----	----	----	2
Practicing medicine without a license	38	19	1	18	----	----	----	----	1	18

Presenting gun	143	67	32	43	1	----	----	7	3	57
Public drunkenness	968	706	32	216	14	----	----	33	4	667
Racing on public road	2	1	------	1	----	----	----	----	----	1
Rape	38	16	12	9	1	1	14	1	----	----
Receiving stolen property	61	19	15	23	4	----	4	10	1	3
Reckless driving	2	2	------	------	----	----	----	----	----	2
Removing boundary mark	1	------	------	1	----	----	----	----	----	----
Removing property under lien	6	2	2	2	----	----	----	----	----	2
Resisting officer	68	34	4	27	3	----	----	14	----	21
Rioting	4	4	------	------	----	----	----	3	----	1
Robbery	88	49	13	22	4	----	45	4	----	----
Seduction	22	3	3	16	----	----	3	----	----	----
Selling diseased meat	3	3	------	------	----	----	----	----	----	3
Selling liquor to convict	1	1	------	------	----	----	----	----	----	1
Selling liqour to minor	86	28	15	40	3	----	----	3	----	25
Selling liquor to intemperate person	1	1	------	------	----	----	----	----	----	1
Selling cigarettes to minor	13	12	------	1	----	----	----	----	----	12
Selling pistol to minor	1	1	------	------	----	----	----	1	----	----
Selling examination papers	3	2	------	1	----	----	----	----	----	2
Selling mortgaged property	119	58	26	31	4	----	----	11	3	46
Selling choking horse	1	------	------	1	----	----	----	----	----	----
Selling choking mule	4	------	1	2	1	----	----	----	----	----
Severing and taking property	2	1	1	------	----	----	----	1	----	----
Shooting across public road	199	132	22	43	2	----	----	6		126
Shooting into passenger train	1	1	------	------	----	----	1	----	----	----
Slander	2	------	2	------	----	----	----	----	----	----
Sodomy	2	2	------	------	----	----	2	----	----	----

GENERAL STATEMENT.—Continued.

CHARACTER OF OFFENSE.	No. of cases disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or withdrawn	No. of sentences to				Fines Paid or Secured
						Death	Penitentiary	Hard Labor	Jail	
Taking property without legal process	2			2						
Temporary use of animal	19	15	2	1	1			5		10
Threatening to kill	2			2						
Throwing missile at train	9	5	1	3				4		
Trespass after warning	278	96	56	104	22			15	1	79
Trespassing on public property	1			1						
Unlawful injury to animal	58	24	15	16	3			1		23
Unlawfully riding on train	83	71	4	7	1			35	2	34
Unlawfully killing fish	9	5	1	3						5
Unlawful assembly	2	1	1							1
Using firearms public place	2	2						2		
Vagrancy	647	212	147	250	38			95	13	95
Violating contract with surety	30	21	2	6	1			3		18
Violating automobile law	4	1		3						1
Violating convict contract	2	2						2		
Violating depot act	1		1							

Violating election law	2	1	1	------	----	----	----	----	----	1
Violating game law	93	41	6	45	1	----	----	2	----	39
Violating prohibition law	1523	820	185	365	153	----	----	173	4	665
Violating revenue law	723	285	100	318	20	----	----	97	10	193
Violating school book law	1	1	------	------	----	----	----	----	----	1
Violating Sunday law	366	249	45	54	18	----	----	23	1	225
Violating stock law	23	9	5	9	----	----	----	----	----	9
Violating sunrise and sunset law	2	1	------	1	----	----	----	----	----	1
Violating written contract	81	60	3	15	3	----	----	23	----	38
Total	20672	11933	2734	5153	852	14	1494	2479	207	7739

* Two to Reformatory.

Percentage of convictions in cases disposed of, 58.

Predominant crime, Abusive language.

III–B

GENERAL STATEMENT

SHOWING CHARACTER AND RESULTS OF PROSECUTIONS IN EACH JUDICIAL CIRCUIT AND IN EACH CITY OR CRIMINAL COURT OR OTHER COURT HAVING A SEPARATE SOLICITOR FOR TWO YEARS ENDING SEPTEMBER 30, 1908.

FIRST JUDICIAL CIRCUIT.

Composed of the Counties of Choctaw, Clarke, Marengo and Monroe.
Hon. O. L. Gray, Solicitor, Butler, Ala.

CHARACTER OF OFFENSE	No. of cases disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abusive language	54	30	---	24	---	---	---	---	---	30	---	---
Adultery and fornication	8	8	---	---	---	---	---	---	---	8	---	---
Affray	2	2	---	---	---	---	---	---	---	2	---	---
Arson, third degree	1	1	---	---	---	---	---	---	---	1	---	---
Assault and battery	47	41	3	3	---	---	---	---	---	41	---	---
Assault and battery with weapon	79	67	---	12	---	---	---	---	---	67	---	---
Assault, intent to murder	18	6	3	5	4	---	---	6	---	---	---	---
Assault, intent to ravish	2	2	---	---	---	---	1	1	---	---	---	---
Attempt to commit felony	5	5	---	---	---	---	---	---	---	5	---	---
Bastardy	2	1	1	---	---	---	---	1	---	---	---	---
Bigamy	1	---	---	---	1	---	---	---	---	---	---	---
Boarding moving train	1	1	---	---	---	---	---	---	---	1	---	---
Bribery	1	---	---	---	1	---	---	---	---	---	---	---
Burglary	19	15	---	2	2	---	10	5	---	---	---	---
Concealed weapons	92	65	5	12	10	---	---	2	---	63	---	---
Conspiracy	2	2	---	---	---	---	---	---	---	2	---	---
Defamation	1	---	---	1	---	---	---	---	---	---	---	---
Defaulting road hand	7	2	1	2	2	---	---	---	---	2	---	---
Disposing prop'ty under lien	2	1	1	---	---	---	---	---	---	1	---	---
Disturbing religious worship	27	15	5	8	1	---	---	---	---	13	---	---
Disturbing labor	1	1	---	---	---	---	---	---	---	1	---	---
Embezzlement	6	---	---	6	---	---	---	---	---	---	---	---
Emigrant agent	1	---	1	---	---	---	---	---	---	---	---	---
False pretense	7	2	2	2	1	---	---	1	---	1	---	---
Forgery, first degree	2	---	---	2	---	---	---	---	---	---	---	---
Gaming	51	39	2	8	2	---	---	---	---	39	---	---

FIRST JUDICIAL CIRCUIT—Continued.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines Paid or Secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Larceny, grand	17	9	3	5	---	---	---	7	2	---	---	---
Larceny, petit	27	21	---	---	6	---	---	---	---	21	---	---
Manslaughter, first degree	6	5	1	---	---	---	5	---	---	---	---	---
Manslaughter, second degree	5	5	---	---	---	---	1	1	---	3	---	---
Murder, first degree	30	12	6	10	2	1	11	---	---	---	---	---
Murder, second degree	12	12	---	---	---	---	12	---	---	---	---	---
Obstructing public justice	3	2	---	---	1	---	---	---	---	2	---	---
Perjury	2	1	1	---	---	---	1	---	---	---	---	---
Poisoning well	1	---	---	1	---	---	---	---	---	---	---	---
Practicing medicine without license	2	2	---	---	---	---	---	---	---	2	---	---
Presenting gun	2	2	---	---	---	---	---	---	---	2	---	---
Public drunkenness	69	48	1	20	---	---	---	---	---	48	---	---
Racing on public road	2	1	---	1	---	---	---	---	---	1	---	---
Receiving stolen property	2	1	---	---	1	---	---	---	---	1	---	---
Resisting officer	1	1	---	---	---	---	---	---	---	1	---	---
Robbery	3	2	1	---	---	---	2	---	---	---	---	---
Selling mortgaged property	2	1	1	---	---	---	---	---	---	1	---	---
Shooting across public road	10	7	---	3	---	---	---	---	---	7	---	---
Temporary use of animal	5	3	---	1	1	---	---	---	---	3	---	---
Trespass after warning	3	2	---	1	---	---	---	---	---	2	---	---
Unlawful injury to animal	2	1	1	---	---	---	---	---	---	1	---	---
Violating prohibition law	242	110	16	46	70	---	---	5	---	110	---	---
Violating revenue law	1	1	---	---	---	---	---	---	---	1	---	---
Violating game law	2	1	---	1	---	---	---	---	---	1	---	---
Violating Sunday law	6	6	---	---	---	---	---	---	---	6	---	---
Violating written contract	2	1	---	---	1	---	---	---	---	1	---	---
Total	899	561	55	176	106	1	44	28	2	491	---	---

Percentage of convictions in cases disposed of, 62.

Predominant crime, Violating prohibition law.

SECOND JUDICIAL CIRCUIT.

Composed of the Counties of Lowndes, Crenshaw, Escambia, Conecuh and Butler.

Hon. C. R. Bricken, Solicitor, Luverne, Ala.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abandonment	1	1	---	---	---	---	---	---	---	1	---	---
Abusive language	75	67	3	5	---	---	---	1	---	66	---	---
Adultery and fornication	11	7	---	3	1	---	---	2	---	5	---	---
Aiding escape	1	1	---	---	---	---	---	---	---	1	---	---
Arson second degree	1	---	---	1	---	---	---	---	---	---	---	---
Assault and battery	43	36	2	5	---	---	---	4	---	32	---	---
Assault and battery with weapon	81	77	---	4	---	---	---	11	---	66	---	---
Assault, intent to murder	33	26	2	3	2	---	23	1	---	2	---	---
Assault, intent to ravish	3	3	---	---	---	---	3	---	---	---	---	---
Attempt to commit arson	1	1	---	---	---	---	---	---	---	1	---	---
Bigamy	1	---	---	1	---	---	---	---	---	---	---	---
Burglary	15	15	---	---	---	---	15	---	---	---	---	---
Burglary and grand larceny	4	3	1	---	---	---	3	---	---	---	---	---
Concealed weapons	112	106	4	2	---	---	---	23	---	83	---	---
Cruelty to animals	4	4	---	---	---	---	---	---	---	4	---	---
Defaulting road hand	7	1	2	4	---	---	---	---	---	1	---	---
Disposing prop'ty under lien	1	---	---	1	---	---	---	---	---	---	---	---
Disorderly conduct	2	---	---	2	---	---	---	---	---	---	---	---
Disturbing females	1	1	---	---	---	---	---	---	---	1	---	---
Disturbing religious worship	28	23	---	4	1	---	---	---	---	23	---	---
False pretense	7	5	---	2	---	---	---	---	---	5	---	---
False impersonation	2	2	---	---	---	---	2	---	---	---	---	---
Forgery, second degree	6	3	1	2	---	---	3	---	---	---	---	---
Gaming	23	15	5	1	2	---	---	2	---	13	---	---
Incest	1	---	1	---	---	---	---	---	---	---	---	---
Larceny, grand	25	21	1	3	---	---	19	1	---	1	---	---

SECOND JUDICIAL CIRCUIT—Continued.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Larceny, petit	31	24	2	5	---	---	---	5	---	19	---	---
Malicious mischief	5	4	---	1	---	---	---	---	---	4	---	---
Manslaughter, first degree	7	7	---	---	---	---	6	1	---	---	---	---
Murder, first degree	21	9	6	5	1	1	8	---	---	---	---	---
Murder, second degree	9	6	1	2	---	---	6	---	---	---	---	---
Perjury	1	---	---	1	---	---	---	---	---	---	---	---
Practicing medicine without license	1	1	---	---	---	---	---	---	---	1	---	---
Presenting gun	7	7	---	---	---	---	---	---	---	7	---	---
Public drunkenness	23	20	---	3	---	---	---	---	---	20	---	---
Rape	1	1	---	---	---	---	1	---	---	---	---	---
Resisting officer	1	---	---	1	---	---	---	---	---	---	---	---
Robbery	4	4	---	---	---	---	4	---	---	---	---	---
Selling mortgaged property	2	2	---	---	---	---	---	---	---	2	---	---
Shooting across public road	10	10	---	---	---	---	---	---	---	10	---	---
Sodomy	2	2	---	---	---	---	2	---	---	---	---	---
Temporary use of animal	1	1	---	---	---	---	---	---	---	1	---	---
Trespass after warning	7	5	---	1	1	---	---	---	---	5	---	---
Unlawful injury to animal	1	1	---	---	---	---	---	---	---	1	---	---
Unlawfully killing hogs	1	1	---	---	---	---	---	---	---	1	---	---
Unlawfully riding on train	1	1	---	---	---	---	---	---	---	1	---	---
Using firearms public place	2	2	---	---	---	---	---	2	---	---	---	---
Vagrancy	5	2	2	1	---	---	---	1	---	1	---	---
Violating contract with surety, confessed judgment	11	11	---	---	---	---	---	---	---	11	---	---
Violating prohibition law	107	83	3	19	---	---	---	16	---	69	---	---
Violating game law	3	1	1	1	---	---	---	---	---	1	---	---
Violating Sunday law	22	22	---	---	---	---	---	---	---	22	---	---
Violating written contract	6	6	---	---	---	---	---	1	---	5	---	---
Total	781	653	39	81	8	1	95	76	---	477	---	---

Percentage of convictions in cases disposed of, 84.

Predominant crime, Concealed weapons.

THIRD JUDICIAL CIRCUIT.

Composed of the Counties of Barbour, Bullock, Dale, Henry and Russell. Hon. C. A. L. Samford, Solicitor, succeeded by Hon. H. B. Steagall, Ozark, August 7, 1907.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to: Death	Penitentiary	Hard Labor	Jail	Fines paid or secured	Insane Asylum	Pardoned
Abusive language	38	27	---	9	2	---	---	2	---	25	--	--
Adultery and fornication	12	7	---	5	---	---	---	1	---	6	--	--
Affray	5	4	1	---	---	---	---	---	---	4	--	--
Arson, first degree	1	---	1	---	---	---	---	---	---	---	--	--
Arson, second degree	6	4	---	2	---	---	4	---	---	---	--	--
Arson, third degree	1	1	---	---	---	---	---	---	---	1	--	--
Assault	3	2	1	---	---	---	---	---	---	2	--	--
Assault and battery	95	83	8	2	2	---	---	11	---	63	--	--
Assault and battery with weapon	10	10	---	---	---	---	---	---	---	10	--	--
Assault, intent to murder	22	14	5	3	---	---	14	---	---	---	--	--
Assault, intent to ravish	1	---	---	1	---	---	---	---	---	---	--	--
Bastardy	7	2	4	---	1	---	---	---	---	2	--	--
Betting at cards	1	---	---	1	---	---	---	---	---	---	--	--
Bigamy	2	2	---	---	---	---	2	---	---	---	--	--
Burglary	35	24	6	4	1	---	24	---	---	---	--	--
Burglary and arson second degree	2	2	---	---	---	---	2	---	---	---	--	--
Carnal knowledge, girl over 10	2	2	---	---	---	---	2	---	---	---	--	--
Concealed weapons	95	75	9	9	2	---	---	9	3	63	--	--
Cruelty to animals	2	1	1	---	---	---	---	---	---	1	--	--
Defaulting road hand	5	4	---	1	---	---	---	---	---	4	--	--
Defaulting witness	2	---	---	2	---	---	---	---	---	---	--	--
Disposing property under lien	14	5	1	8	---	---	---	---	---	5	--	--

THIRD JUDICIAL CIRCUIT—Continued.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Disturbing religious worship	14	6	1	7	---	---	---	---	---	6	---	---
Enticing labor	2	---	---	1	1	---	---	---	---	---	---	---
False pretense	21	16	4	1	---	---	4	5	1	8	---	---
Forgery, second degree	2	2	---	---	---	---	2	---	---	---	---	---
Gaming	1	---	---	1	---	---	---	---	---	---	---	---
Gaming on Sunday	2	1	1	---	---	---	---	---	---	1	---	---
Incest	1	1	---	---	---	---	1	---	---	---	---	---
Larceny, grand	36	28	3	4	1	---	27	---	---	---	---	---
Larceny, petit	24	14	4	5	1	---	---	3	1	12	---	---
Malicious mischief	2	---	2	---	---	---	---	---	---	---	---	---
Manslaughter, second degree	1	1	---	---	---	---	---	---	1	1	---	---
Miscegenation	2	2	---	---	---	---	2	---	---	---	---	---
Murder, first degree	10	3	6	1	---	---	3	---	---	---	---	---
Murder, second degree	14	7	4	2	1	---	7	---	---	---	---	---
Obtaining money under false pretense	1	---	---	1	---	---	---	---	---	---	---	---
Playing cards, public place	17	16	---	1	---	---	---	---	---	16	---	---
Playing cards on Sunday	5	4	1	---	---	---	---	---	---	4	---	---
Practicing medicine without license	1	1	---	---	---	---	---	---	---	1	---	---
Presenting gun	5	3	---	2	---	---	---	---	---	3	---	---
Public drunkenness	10	7	2	1	---	---	---	---	---	7	---	---
Receiving stolen property	2	---	1	1	---	---	---	---	---	---	---	---
Resisting officer	1	1	---	---	---	---	---	---	---	1	---	---
Robbery	1	---	---	1	---	---	---	---	---	---	---	---
Seduction	3	---	1	2	---	---	---	---	---	---	---	---
Selling liquor to minor	1	---	---	1	---	---	---	---	---	---	---	---
Selling liquor to intemperate person	1	1	---	---	---	---	---	---	---	1	---	---

THIRD JUDICIAL CIRCUIT—Continued.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Selling mortgaged property	5	1	1	3	---	---	---	---	---	1	--	--
Shooting across public road	2	1	---	1	---	---	---	---	---	1	--	--
Throwing missile at train	1	1	---	---	---	---	1	---	---	---	--	--
Unlawful injury to animal	10	6	---	4	---	---	---	---	---	6	--	--
Vagrancy	5	1	3	1	---	---	---	---	---	1	--	--
Violating contract with surety, confessed judgment	3	---	---	3	---	---	---	---	---	---	--	--
Violating prohibition law	92	53	20	18	1	---	---	8	---	48	--	--
Violating revenue law	1	---	1	---	---	---	---	---	---	---	--	--
Violating game law	2	1	---	1	---	---	---	---	---	1	--	--
Violating Sunday law	40	32	2	6	---	---	---	2	---	30	--	--
Violating written contract	2	1	1	---	---	---	---	---	---	1	--	--
Total	704	480	95	116	13	---	95	41	6	376	--	--

Percentage of convictions in cases disposed of, 78.

Predominant crime, Assault and battery and concealed weapons—95 cases each.

FOURTH JUDICIAL CIRCUIT.

Composed of the Counties of Bibb, Dallas, Hale, Perry and Wilcox.
Hon. J. F. Thompson, Solicitor, Centreville, Ala.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abusive language	9	6	---	3	---	---	---	---	---	6	---	---
Adultery and fornication	6	4	1	1	---	---	---	---	---	4	---	---
Arson, first degree	1	1	---	---	---	---	1	---	---	---	---	---
Arson, second degree	2	1	1	---	---	---	1	---	---	---	---	---
Arson, third degree	2	1	---	1	---	---	---	---	---	1	---	---
Assault and battery	35	31	---	2	2	---	---	6	---	25	---	---
Assault and battery with weapon	87	82	---	4	1	---	---	18	---	66	---	---
Assault intent to murder	39	21	6	8	4	---	10	11	---	---	---	---
Attempt to commit felony	2	2	---	---	---	---	---	---	---	2	---	---
Burglary	46	19	6	19	2	---	19	---	---	---	---	---
Buying seed cotton	1	---	1	---	---	---	---	---	---	---	---	---
Concealed weapons	53	43	3	6	1	---	---	14	---	29	---	---
Contempt	6	6	---	---	---	---	---	---	4	2	---	---
Crime against nature	1	1	---	---	---	---	1	---	---	---	---	---
Cruelty to animals	5	5	---	---	---	---	---	---	---	5	---	---
Defaulting road hand	1	1	---	---	---	---	---	---	---	1	---	---
Embezzlement	2	---	---	2	---	---	---	---	---	---	---	---
Enticing labor	2	1	---	1	---	---	---	---	---	1	---	---
False pretense	2	1	---	1	---	---	---	---	1	---	---	---
Forgery, third degree	7	3	---	2	2	---	---	3	---	---	---	---
Harboring girl	1	---	---	1	---	---	---	---	---	---	---	---
Incest	1	---	1	---	---	---	---	---	---	---	---	---
Larceny, grand	37	22	1	10	4	---	4	18	---	---	---	---
Larceny, petit	63	58	---	3	2	---	---	17	---	41	---	---
Manslaughter, first degree	28	28	---	---	---	---	21	7	---	---	---	---

FOURTH JUDICIAL CIRCUIT—Continued.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Manslaughter, second degree	9	9	---	---	---	---	2	---	---	7	---	---
Murder, first degree	16	6	6	2	2	---	6	---	---	---	---	---
Murder, second degree	7	7	---	---	---	---	7	---	---	---	---	---
Perjury	4	1	---	2	1	---	---	1	---	---	---	---
Playing cards, public place	2	2	---	---	---	---	---	---	---	2	---	---
Presenting gun	4	3	---	1	---	---	---	---	---	3	---	---
Rape	6	3	1	2	---	1	2	---	---	---	---	---
Receiving stolen property	1	---	---	1	---	---	---	---	---	---	---	---
Selling mortgaged property	5	3	---	2	---	---	---	---	---	3	---	---
Shooting across public road	5	3	---	2	---	---	---	---	---	3	---	---
Trespass after warning	5	2	1	2	---	---	---	1	---	2	---	---
Violating game law	1	1	---	---	---	---	---	---	---	1	---	---
Violating prohibition law	145	74	13	18	30	---	---	15	---	69	---	---
Violating revenue law	1	---	---	1	---	---	---	---	---	---	---	---
Violating Sunday law	4	2	---	1	1	---	---	---	---	2	---	---
Total	654	463	41	98	52	1	74	111	5	275	---	---

Percentage of convictions in cases disposed of, 71.

Predominant crime, violating prohibition law.

FIFTH JUDICIAL CIRCUIT.

Composed of the Counties of Chambers, Macon, Randolph and Tallapoosa.
Hon. W. B. Bowling, Solicitor, Dadeville, Ala.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abusive language	51	34	1	16	---	---	---	---	---	34	---	---
Adultery and fornication	9	8	---	1	---	---	---	---	---	8	---	---
Affray	3	3	---	---	---	---	---	---	---	3	---	---
Arson, first degree	1	1	---	---	---	---	1	---	---	---	---	---
Arson, second degree	5	2	---	3	---	---	2	---	---	---	---	---
Assault	1	---	---	1	---	---	---	---	---	---	---	---
Assault and battery	22	16	4	1	1	---	---	3	---	13	---	---
Assault and battery with weapon	65	56	3	5	1	---	---	5	---	53	---	---
Assault, intent to murder	23	11	3	8	1	---	11	---	---	---	---	---
Assault, intent to ravish	7	3	---	3	1	---	2	1	---	---	---	---
Bastardy	3	3	---	---	---	---	---	---	---	3	---	---
Bigamy	2	1	---	---	1	---	1	---	---	---	---	---
Bigamous cohabitation	1	1	---	---	---	---	1	---	---	---	---	---
Burglary	24	18	2	4	---	---	17	1	---	---	---	---
Burglary and grand larceny	1	1	---	---	---	---	1	---	---	---	---	---
Concealed weapons	50	32	7	10	1	---	---	3	---	29	---	---
Crime against nature	1	1	---	---	---	---	1	---	---	---	---	---
Cruelty to animals	2	2	---	---	---	---	---	---	---	2	---	---
Defaulting road hand	9	4	3	2	---	---	---	---	---	4	---	---
Disturbing females	3	3	---	---	---	---	---	---	---	3	---	---
Disturbing religious worship	9	7	---	2	---	---	---	---	---	7	---	---
Embezzlement	6	4	1	1	---	---	2	---	---	2	---	---
Failing to repair public road	1	---	---	1	---	---	---	---	---	---	---	---

FIFTH JUDICIAL CIRCUIT—Continued.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
False pretense	6	4	---	2	---	---	---	---	---	4	---	---
Forgery, second degree	3	3	---	---	---	---	---	---	---	3	---	---
Gaming	13	2	2	9	---	---	---	---	---	2	---	---
Keeping bawdy house	1	---	---	1	---	---	---	---	---	---	---	---
Larceny, grand	31	21	3	6	1	---	19	2	---	---	---	---
Larceny, petit	11	9	1	1	---	---	---	2	---	7	---	---
Mayhem	1	---	---	1	---	---	---	---	---	---	---	---
Malicious mischief	1	---	1	---	---	---	---	---	---	---	---	---
Manslaughter, first degree	12	12	---	---	---	---	11	1	---	---	---	---
Manslaughter, second degree	1	1	---	---	---	---	---	1	---	---	---	---
Miscegenation	3	3	---	---	---	---	3	---	---	---	---	---
Murder, first degree	15	9	4	2	---	---	9	---	---	---	---	---
Murder, second degree	21	16	3	2	---	---	16	---	---	---	---	---
Obstructing public road	1	---	1	---	---	---	---	---	---	---	---	---
Perjury	3	---	---	2	1	---	---	---	---	---	---	---
Playing cards, public place	5	5	---	---	---	---	---	---	---	5	---	---
Playing cards on Sunday	1	1	---	---	---	---	---	---	---	1	---	---
Practicing medicine without license	3	3	---	---	---	---	---	---	---	3	---	---
Presenting gun	2	2	---	---	---	---	---	---	---	2	---	---
Public drunkenness	15	13	---	2	---	---	---	---	---	13	---	---
Rape	1	1	---	---	---	---	1	---	---	---	---	---
Resisting officer	1	1	---	---	---	---	---	---	---	1	---	---
Robbery	2	2	---	---	---	---	2	---	---	---	---	---
Seduction	4	---	---	4	---	---	---	---	---	---	---	---
Selling liquor to minor	1	1	---	---	---	---	---	---	---	1	---	---
Selling choking mule	1	---	1	---	---	---	---	---	---	---	---	---
Selling mortgaged property	8	3	1	4	---	---	---	---	2	3	---	---
Shooting across public road	2	---	---	2	---	---	---	---	---	---	---	---

FIFTH JUDICIAL CIRCUIT—Continued.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Temporary use of animal	1	1	---	---	---	---	---	---	---	1	---	---
Throwing missile at train	2	2	---	---	---	---	2	---	---	---	---	---
Trespass after warning	4	1	---	3	---	---	---	---	---	1	---	---
Vagrancy	1	1	---	---	---	---	---	---	---	1	---	---
Violating contract with surety, confessed judgment	1	1	---	---	---	---	---	---	---	1	---	---
Violating prohibition law	22	17	1	2	2	---	---	3	4	17	---	---
Violating revenue law	61	46	2	13	---	---	---	5	9	46	---	---
Violating stock law	1	---	---	1	---	---	---	---	---	---	---	---
Violating game law	1	1	---	---	---	---	---	---	---	1	---	---
Violating Sunday law	6	6	---	---	---	---	---	---	---	6	---	---
Violating school book law	1	1	---	---	---	---	---	---	---	1	---	---
Violating sunrise and sunset law	1	---	---	1	---	---	---	---	---	---	---	---
Violating written contract	6	4	1	1	---	---	---	---	---	4	---	---
Total	576	404	45	117	10	---	102	27	15	285	---	---

Percentage of convictions in cases disposed of, 70.

Predominant crime, assault and battery with weapon.

SIXTH JUDICIAL CIRCUIT.

Composed of the Counties of Fayette, Greene, Lamar, Pickens, Sumter and Tuscaloosa.

Hon. W. B. Oliver, Solicitor, Tuscaloosa, Ala.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abandonment	1	1	---	---	---	---	---	---	---	1	---	---
Adultery and fornication	31	27	---	2	2	---	---	---	---	27	---	---
Affray	1	---	---	1	---	---	---	---	---	---	---	---
Allowing stock to run at large	4	4	---	---	---	---	---	---	---	4	---	---
Allowing minor to play pool	1	1	---	---	---	---	---	---	---	1	---	---
Assault and battery with weapon	42	39	1	1	1	---	---	2	---	37	---	---
Assault, intent to murder	101	93	1	5	2	---	---	7	---	86	---	---
Assault, intent to ravish	6	3	---	1	2	---	3	---	---	---	---	---
Assault, intent to rob	1	---	---	---	1	---	---	---	---	---	---	---
Attempt to commit felony	2	2	---	---	---	---	---	1	---	1	---	---
Betting with minor	1	1	---	---	---	---	---	---	---	1	---	---
Burglary	21	18	---	1	2	---	2	16	---	---	---	---
Concealed weapons	82	70	---	10	2	---	---	5	---	65	---	---
Defacing public building	2	2	---	---	---	---	---	---	---	2	---	---
Defaulting road hand	10	9	1	---	---	---	---	---	---	9	---	---
Disturbing religious worship	5	3	---	2	---	---	---	---	---	3	---	---
Disturbing public assembly	2	2	---	---	---	---	---	---	---	2	---	---
Embezzlement	1	---	---	---	1	---	---	---	---	---	---	---
Enticing labor	2	1	---	1	---	---	---	---	---	1	---	---
False pretense	7	5	---	2	---	---	---	1	---	4	---	---
Forgery, second degree	1	1	---	---	---	---	---	1	---	---	---	---
Gaming	46	37	---	8	1	---	---	---	---	37	---	---
Larceny, grand	19	17	---	1	1	---	4	13	---	---	---	---
Larceny, petit	34	31	1	1	1	---	---	2	---	29	---	---

SIXTH JUDICIAL CIRCUIT—Continued.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Lottery	2	2	---	---	---	---	---	---	---	2	---	---
Manslaughter, first degree	10	7	1	2	---	---	5	2	---	---	---	---
Manslaughter, second degree	2	2	---	---	---	---	---	1	---	1	---	---
Murder, first degree	9	7	1	1	---	---	7	---	---	---	---	---
Murder, second degree	8	7	1	---	---	---	7	---	---	---	---	---
Obstructing public justice	1	1	---	---	---	---	---	---	---	1	---	---
Perjury	1	1	---	---	---	---	1	---	---	---	---	---
Practicing medicine without license	2	2	---	---	---	---	---	---	---	2	---	---
Public drunkenness	117	111	---	2	4	---	---	---	---	111	---	---
Resisting officer	1	1	---	---	---	---	---	---	---	1	---	---
Robbery	2	1	---	1	---	---	1	---	---	---	---	---
Seduction	1	---	---	1	---	---	---	---	---	---	---	---
Selling liquor to minor	5	2	1	---	2	---	---	1	---	1	---	---
Selling mortgaged property	17	17	---	---	---	---	---	---	---	17	---	---
Shooting across public road	16	13	---	3	---	---	---	---	---	13	---	---
Temporary use of animal	1	1	---	---	---	---	---	---	---	1	---	---
Trespass after warning	8	7	---	1	---	---	---	---	---	7	---	---
Unlawful injury to animal	3	2	1	---	---	---	---	---	---	2	---	---
Violating contract with surety, confessed judgment	4	4	---	---	---	---	---	---	---	4	---	---
Violating prohibition law	116	84	5	16	11	---	---	31	---	53	---	---
Violating revenue law	1	1	---	---	---	---	---	---	---	1	---	---
Violating stock law	2	2	---	---	---	---	---	---	---	2	---	---
Violating game law	1	1	---	---	---	---	---	---	---	1	---	---
Violating Sunday law	12	11	---	1	---	---	---	---	---	11	---	---
Violating written contract	1	---	---	1	---	---	---	---	---	---	---	---
Total	766	654	14	65	33	---	30	83	---	443	---	---

Percentage of convictions in cases disposed of, 86.

Predominant crime, public drunkenness.

SEVENTH JUDICIAL CIRCUIT.

Composed of the Counties of Calhoun, Clay, Cleburne, Shelby and Talladega.

Hon. B. H. Burr, Solicitor, Talladega, Ala.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abusive language	18	16	1	1	---	---	---	2	---	14	---	---
Adultery and fornication	5	4	---	1	---	---	---	2	2	---	---	---
Affray	11	11	---	---	---	---	---	---	---	11	---	---
Arson, third degree	1	1	---	---	---	---	---	---	---	1	---	---
Assault and battery	9	7	---	2	---	---	---	1	---	6	---	---
Assault and battery with weapon	15	13	1	1	---	---	---	3	---	10	---	---
Assault, intent to murder	8	3	---	5	---	---	2	---	---	---	---	---
Assault, intent to ravish	1	1	---	---	---	---	1	---	---	---	---	---
Bastardy	1	---	---	---	1	---	---	---	---	---	---	---
Bribery	1	---	---	1	---	---	---	---	---	---	---	---
Burglary	7	5	1	1	---	---	5	---	---	---	---	---
Concealed weapons	8	6	2	---	---	---	---	---	---	6	---	---
Cruelty to animals	2	2	---	---	---	---	---	---	---	2	---	---
Defamation	1	1	---	---	---	---	---	---	---	1	---	---
Disturbing females	1	1	---	---	---	---	---	---	---	1	---	---
Disturbing religious worship	6	4	---	2	---	---	---	---	---	4	---	---
False pretense	2	---	2	---	---	---	---	---	---	---	---	---
Forgery, third degree	2	1	---	1	---	---	---	---	1	1	---	---
Incest	1	1	---	---	---	---	1	---	---	---	---	---
Keeping false books	1	---	1	---	---	---	---	---	---	---	---	---
Larceny, grand	9	9	---	---	---	---	9	---	---	---	---	---
Larceny, petit	5	5	---	---	---	---	---	4	1	---	---	---
Mayhem	2	---	2	---	---	---	---	---	---	---	---	---
Manslaughter, first degree	5	5	---	---	---	---	5	---	---	---	---	---

SEVENTH JUDICIAL CIRCUIT—Continued.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. of sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Murder, first degree	3	3	---	---	---	1	2	---	---	---	---	---
Murder, second degree	14	13	1	---	---	---	13	---	---	---	---	---
Obtaining money under false pretense	1	---	---	1	---	---	---	---	---	---	---	---
Obstructing public road	1	1	---	---	---	---	---	---	---	---	---	---
Operating slot machine	4	4	---	---	---	---	---	---	---	4	---	---
Perjury	3	---	2	1	---	---	---	---	---	---	---	---
Public drunkenness	38	32	2	4	---	---	---	1	---	31	---	---
Rape	1	---	1	---	---	---	---	---	---	---	---	---
Removing property under lien	1	1	---	---	---	---	---	---	---	1	---	---
Road Overseer, neglect of duty	1	1	---	---	---	---	---	---	---	1	---	---
Robbery	5	4	1	---	---	---	4	---	---	---	---	---
Seduction	1	1	---	---	---	---	1	---	---	---	---	---
Selling mortgaged property	1	---	---	1	---	---	---	---	---	---	---	---
Sending abusive letter	1	1	---	---	---	---	---	---	1	1	---	---
Trespass after warning	1	1	---	---	---	---	---	---	---	1	---	---
Violating game law	2	---	2	---	---	---	---	---	---	---	---	---
Violating prohibition law	5	4	---	1	---	---	---	---	---	4	---	---
Violating revenue law	13	11	1	1	---	---	---	1	1	10	---	---
Violating written contract	1	1	---	---	---	---	---	---	---	1	---	---
Total	218	173	18	25	1	1	43	14	7	111	---	---

Percentage of convictions in cases disposed of, 79.

Predominant crime, Public drunkenness.

EIGHTH JUDICIAL CIRCUIT.

Composed of the Counties of Cullman, Lawrence, Limestone, Madison and Morgan.

Hon. D. C. Almon, Solicitor, New Decatur, Alabama.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abusive language	8	6	---	2	---	---	---	---	---	6	---	---
Assault	5	5	---	---	---	---	---	1	---	4	---	---
Assault and battery	1	1	---	---	---	---	---	---	---	1	---	---
Assault and battery with weapon	16	15	---	1	---	---	---	4	---	11	---	---
Assault, intent to murder	14	6	5	2	1	---	2	---	---	4	---	---
Assault, intent to ravish	4	3	---	1	---	---	3	---	---	---	---	---
Attempt at carnal knowledge	1	1	---	---	---	---	1	---	---	---	---	---
Betting at pool	1	1	---	---	---	---	---	---	---	1	---	---
Bigamy	1	---	---	1	---	---	---	---	---	---	---	---
Burglary	19	13	1	1	4	---	13	---	---	---	---	---
Carnal knowledge, girl over 10	1	1	---	---	---	---	1	---	---	---	---	---
Concealed weapons	26	14	4	8	---	---	---	---	1	13	---	---
Defaulting road hand	1	1	---	---	---	---	---	---	---	1	---	---
Disturbing relig. worship	1	---	---	1	---	---	---	---	---	---	---	---
False pretense	1	---	---	1	---	---	---	---	---	---	---	---
Forgery, first degree	2	1	1	---	---	---	1	---	---	---	---	---
Gaming	11	9	---	2	---	---	---	---	---	9	---	---
Incest	1	---	1	---	---	---	---	---	---	---	---	---
Larceny, grand	16	5	7	6	1	---	4	1	---	---	---	---
Larceny, petit	9	8	---	1	---	---	---	3	4	3	---	---
Malicious mischief	2	1	---	1	---	---	---	---	---	1	---	---
Manslaughter, first degree	1	1	---	---	---	---	1	---	---	---	---	---

EIGHTH JUDICIAL CIRCUIT—Continued.

CHARACTER OF OFFENSE	No. of cases disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Murder, first degree	15	10	3	2	---	---	10	---	---	---	---	---
Murder, second degree	3	3	---	---	---	---	3	---	---	---	---	---
Obtaining money under false pretense	1	---	1	---	---	---	---	---	---	---	---	---
Obstructing public road	1	---	---	1	---	---	---	---	---	---	---	---
Operating slot machine	3	3	---	---	---	---	---	---	---	3	---	---
Perjury	5	---	---	5	---	---	---	---	---	---	---	---
Public drunkenness	5	4	---	1	---	---	---	---	---	4	---	---
Rape	1	---	1	---	---	---	---	---	---	---	---	---
Robbery	2	1	---	---	1	---	1	---	---	---	---	---
Selling liquor to minor	1	1	---	---	---	---	---	---	---	1	---	---
Selling mortgaged property	1	---	---	1	---	---	---	---	---	---	---	---
Shooting across public road	2	2	---	---	---	---	---	---	---	2	---	---
Trespass after warning	2	1	---	1	---	---	---	---	---	---	---	---
Vagrancy	2	---	---	2	---	---	---	---	---	---	---	---
Violating prohibition law	5	3	---	2	---	---	---	---	---	3	---	---
Violating revenue law	17	15	1	1	---	---	---	9	---	6	---	---
Total	208	125	25	51	7	---	40	18	5	73	---	---

Percentage of convictions in cases disposed of, 60.

Predominant crime, Concealed weapons.

NINTH JUDICIAL CIRCUIT.

Composed of the Counties of Cherokee, DeKalb, Jackson and Marshall.
Hon. R. C. Hunt, Solicitor, Ft. Payne, Ala.
Hon. J. F. Proctor, Solicitor of Jackson County, prosecutes for that county.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abusive language	111	65	5	37	4	---	---	---	---	64	---	---
Adultery and fornication	18	10	2	6	---	---	---	2	---	8	---	---
Affray	7	4	2	1	---	---	---	---	---	4	---	---
Arson, second degree	1	---	---	1	---	---	---	---	---	---	---	---
Assault	47	30	7	8	2	---	---	1	---	29	---	---
Assault and battery	2	---	1	1	---	---	---	---	---	---	---	---
Assault and battery with weapon	25	21	1	3	---	---	---	1	---	21	---	---
Assault, intent to murder	12	5	2	5	---	---	5	---	---	---	---	---
Assault, intent to ravish	2	1	---	1	---	---	1	---	---	---	---	---
Attempt to poison	1	---	---	---	1	---	---	---	---	---	---	---
Bastardy	5	5	---	---	---	---	---	---	---	5	---	---
Betting on election	2	1	---	1	---	---	---	---	---	1	---	---
Bribery	1	---	---	1	---	---	---	---	---	---	---	---
Burglary	8	6	---	---	2	---	6	---	---	---	---	---
Burglary and grand larceny	3	1	1	---	1	---	1	---	---	---	---	---
Concealed weapons	103	47	18	34	4	---	---	5	---	37	---	---
Crime against nature	1	---	1	---	---	---	---	---	---	---	---	---
Defamation	4	2	1	1	---	---	---	---	---	2	---	---
Defaulting road hand	18	7	5	6	---	---	---	---	---	7	---	---
Disturbing females	4	2	---	2	---	---	---	---	---	2	---	---
Disturbing religious worship	39	17	5	15	2	---	---	1	---	16	---	---
Disturbing school	5	5	---	---	---	---	---	---	---	5	---	---
Embezzlement	1	---	---	*1	---	---	---	---	---	---	---	---
False pretense	6	5	---	1	---	---	1	1	---	3	---	---

NINTH JUDICIAL CIRCUIT—Continued.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines Paid or Secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Forgery, second degree	1	---	---	1	---	---	---	---	---	---	---	---
Gaming	23	14	1	7	1	---	---	---	---	14	---	---
Gaming on Sunday	28	19	3	6	---	---	---	---	---	19	---	---
Giving liquor to minor	3	1	1	1	---	---	---	---	---	1	---	---
Hauling on pike without license	14	10	---	3	1	---	---	---	---	10	---	---
Injury to telephone	1	1	---	---	---	---	---	---	---	1	---	---
Larceny, grand	38	26	3	9	---	---	26	---	---	---	---	---
Larceny, petit	13	6	3	4	---	---	---	4	---	5	---	---
Malicious mischief	1	1	---	---	---	---	---	1	---	---	---	---
Manslaughter, first degree	3	2	1	---	---	---	2	---	---	---	---	---
Manslaughter, second degree	1	1	---	---	---	---	---	1	---	---	---	---
Murder, first degree	4	3	1	---	---	---	3	---	---	---	---	---
Murder, second degree	4	3	---	1	---	---	3	---	---	---	---	---
Obtaining money under false pretense	1	---	1	---	---	---	---	---	---	---	---	---
Obtaining bond by fraud	1	---	---	1	---	---	---	---	---	---	---	---
Obstructing public road	4	1	2	---	1	---	---	---	---	1	---	---
Permitting minor play pool	1	1	---	---	---	---	---	---	---	1	---	---
Playing cards on Sunday	6	2	---	3	1	---	---	---	---	2	---	---
Practicing dentistry without license	1	1	---	---	---	---	---	---	---	1	---	---
Presenting gun	12	8	1	3	---	---	---	---	---	8	---	---
Public drunkenness	95	67	3	21	1	---	---	---	---	67	---	---
Selling choking mule	2	---	---	1	1	---	---	---	---	---	---	---
Selling liquor to minor	3	1	1	1	---	---	---	---	---	1	---	---
Selling cigarettes to minor	7	6	---	1	---	---	---	---	---	6	---	---
Sending abusive letter	1	---	---	1	---	---	---	---	---	---	---	---
Shooting across public road	10	6	1	3	---	---	---	---	---	6	---	---

NINTH JUDICIAL CIRCUIT—Continued.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Selling pistol to minor	1	1	---	---	---	---	---	---	---	1	---	---
Temporary use of animal	1	1	---	---	---	---	---	---	---	1	---	---
Trespass after warning	15	5	1	9	---	---	---	---	---	5	---	---
Unlawful injury to animal	1	---	---	1	---	---	---	---	---	---	---	---
Unlawfully riding on train	6	4	---	2	---	---	---	---	---	4	---	---
Violating contract with surety, confessed judgment	1	---	---	---	1	---	---	---	---	---	---	---
Violating prohibition law	119	40	22	56	2	---	---	10	---	30	---	---
Violating fish law	1	---	---	1	---	---	---	---	---	---	---	---
Violating revenue law	3	---	---	3	---	---	---	---	---	---	---	---
Violating stock law	3	---	---	3	---	---	---	---	---	---	---	---
Violating Sunday law	2	2	---	---	---	---	---	---	---	2	---	---
Total	857	467	96	269	25	---	48	27	---	390	---	---

Percentage of convictions in cases disposed of, 54.

Predominant crime, Violating prohibition law.

TENTH JUDICIAL CIRCUIT.

Composed of the County of Jefferson.
Hon. John McQueen, Solicitor, Birmingham, Ala.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Assault and battery	1	1	---	---	---	---	---	---	---	1	---	---
Assault and battery with weapon	1	1	---	---	---	---	---	---	---	1	---	---
Assault, intent to murder	2	---	---	2	---	---	---	---	---	---	---	---
Concealed weapons	4	1	2	1	---	---	---	---	---	1	---	---
Disturbing religious worship	1	---	---	1	---	---	---	---	---	---	---	---
Dynamiting stream	1	---	---	1	---	---	---	---	---	---	---	---
Gaming	1	---	1	---	---	---	---	---	---	---	---	---
Giving liquor to minor	1	---	1	---	---	---	---	---	---	---	---	---
Larceny, petit	2	---	1	1	---	---	---	---	---	---	---	---
Murder, first degree	2	---	---	2	---	---	---	---	---	---	---	---
Public drunkenness	4	3	---	1	---	---	---	---	---	3	---	---
Shooting across public road	1	1	---	---	---	---	---	---	---	1	---	---
Trespass after warning	1	1	---	---	---	---	---	---	---	1	---	---
Violating prohibition law	5	---	1	4	---	---	---	---	---	---	---	---
Total	27	8	6	13	---	---	---	---	---	8	---	---

Percentage of convictions in cases disposed of, 30.
Predominant crime, Concealed weapons and Violating prohibition law.

ELEVENTH JUDICIAL CIRCUIT.

Composed of the Counties of Colbert, Franklin, Lauderdale and Marion.
Hon. R. T. Simpson, Jr., Solicitor, Florence, Ala.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abandonment	1	---	---	1	---	---	---	---	---	---	--	--
Aiding escape	2	1	---	1	---	---	---	---	---	1	--	--
Abortion	1	---	---	---	1	---	---	---	---	---	--	--
Abusive language	79	42	2	35	---	---	---	---	---	42	--	--
Adultery and fornication	11	3	1	7	---	---	---	1	---	2	--	--
Arson, second degree	1	1	---	---	---	---	1	---	---	---	--	--
Assault	13	7	---	4	2	---	---	1	1	5	--	--
Assault and battery	16	9	---	7	---	---	---	---	---	9	--	--
Assault and battery with weapon	48	38	---	7	3	---	---	7	---	31	--	--
Assault, intent to murder	25	5	1	15	4	---	1	4	---	---	--	--
Assault, intent to ravish	2	---	---	2	---	---	---	---	---	---	--	--
Bigamy	1	---	---	1	---	---	---	---	---	---	--	--
Burglary	10	7	1	2	---	---	---	4	3	---	--	--
Burglary in railroad car	3	---	---	3	---	---	---	---	---	---	--	--
Concealed weapons	74	48	4	22	---	---	---	7	---	42	--	--
Cruelty to animals	2	1	---	1	---	---	---	---	---	1	--	--
Defacing public building	1	---	---	1	---	---	---	---	---	---	--	--
Defamation	5	1	1	3	---	---	---	---	---	1	--	--
Defaulting road hand	9	2	---	7	---	---	---	---	---	2	--	--
Disorderly house	1	---	---	1	---	---	---	---	---	---	--	--
Disturbing females	6	4	---	2	---	---	---	---	---	4	--	--
Disturbing religious worship	32	15	4	13	---	---	---	---	---	15	--	--
Embezzlement	1	---	---	1	---	---	---	---	---	---	--	--
Escape	1	---	---	1	---	---	---	---	---	---	--	--
False pretense	5	1	2	2	---	---	---	---	---	1	--	--
Fraudulently changing name	1	---	---	1	---	---	---	---	---	---	--	--
Gaming	64	49	2	13	---	---	---	2	---	48	--	--
Horse racing	3	2	---	1	---	---	---	---	---	2	--	--

ELEVENTH JUDICIAL CIRCUIT—Continued.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Incest	1	1	---	---	---	---	1	---	---	---	---	---
Injuring telegraph poles	1	---	---	---	1	---	---	---	---	---	---	---
Kidnapping	1	---	---	1	---	---	---	---	---	---	---	---
Larceny, grand	28	14	1	13	---	---	8	6	---	---	---	---
Larceny, petit	16	9	1	6	---	---	---	2	6	7	---	---
Manslaughter, first degree	3	3	---	---	---	---	3	---	---	---	---	---
Manslaughter, second degree	2	1	1	---	---	---	---	1	---	---	---	---
Murder, first degree	10	7	2	1	---	---	7	---	---	---	---	---
Murder, second degree	5	3	2	---	---	---	3	---	---	---	---	---
Obstructing public road	8	---	---	8	---	---	---	---	---	---	---	---
Perjury	2	---	---	2	---	---	---	---	---	---	---	---
Permitting minor play pool	2	2	---	---	---	---	---	---	---	2	---	---
Practicing medicine without license	10	1	---	9	---	---	---	---	---	1	---	---
Presenting gun	1	1	---	---	---	---	---	---	---	1	---	---
Public drunkenness	141	84	2	55	---	---	---	---	---	84	---	---
Rape	1	1	---	---	---	---	1	---	---	---	---	---
Resisting officer	1	1	---	---	---	---	---	---	---	1	---	---
Robbery	4	1	2	1	---	---	1	---	---	---	---	---
Selling liquor to minor	1	---	---	1	---	---	---	---	---	---	---	---
Selling mortgaged property	10	7	---	2	1	---	---	3	---	4	---	---
Shooting across public road	4	3	---	1	---	---	---	---	---	3	---	---
Trespass after warning	12	1	---	11	---	---	---	---	---	1	---	---
Unlawful injury to animal	2	1	---	1	---	---	---	---	---	1	---	---
Vagrancy	18	2	2	14	---	---	---	---	1	1	---	---
Violating revenue law	67	37	4	25	1	---	---	1	---	36	---	---
Violating Sunday law	10	5	---	5	---	---	---	---	---	5	---	---
Violating game law	1	1	---	---	---	---	---	---	---	1	---	---
Total	780	422	35	310	13	---	---	26	39	270	---	---

Percentage of convictions in cases disposed of, 54.

Predominant crime, Public drunkenness.

TWELFTH JUDICIAL CIRCUIT.

Composed of the Counties of Coffee, Covington, Geneva, Houston and Pike.
Hon. R. H. Parks, Solicitor, Troy, Ala.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abusive language	19	15	1	2	1	---	---	---	---	15	---	---
Adultery and fornication	9	2	1	5	1	---	---	1	---	1	---	---
Altering mark	1	---	---	1	---	---	---	---	---	---	---	---
Arson, first degree	2	1	1	---	---	---	1	---	---	---	---	---
Arson, second degree	2	1	---	1	---	---	---	1	---	---	---	---
Assault and battery	72	68	6	3	1	---	---	13	---	49	---	---
Assault and battery with weapon	4	4	---	---	---	---	---	1	---	3	---	---
Assault, intend to murder	37	30	1	5	1	---	29	1	---	---	---	---
Assault, intent to ravish	2	1	1	---	---	---	1	---	---	---	---	---
Bigamy	5	3	---	---	2	---	3	---	---	---	---	---
Burglary	30	20	1	7	2	---	20	---	---	---	---	---
Concealed weapons	37	25	4	5	3	---	---	1	---	24	---	---
Crime against nature	4	4	---	---	---	---	4	---	---	---	---	---
Cruelty to animals	1	1	---	---	---	---	---	---	---	1	---	---
Defamation	1	1	---	---	---	---	---	---	---	1	---	---
Defaulting road hand	8	7	1	---	---	---	---	2	---	5	---	---
Disturbing females	1	1	---	---	---	---	---	---	---	1	---	---
Disturbing religious worship	10	6	2	2	---	---	---	---	---	6	---	---
Escape	1	1	---	---	---	---	---	1	---	---	---	---
False pretense	31	17	2	9	3	---	2	7	---	8	---	---
Forgery, first degree	10	3	---	7	---	---	3	---	---	---	---	---
Forgery, third degree	2	2	---	---	---	---	---	1	---	1	---	---
Gaming	7	7	---	---	---	---	---	---	---	7	---	---
Incest	1	---	---	1	---	---	---	---	---	---	---	---
Larceny, grand	27	17	1	8	1	---	17	---	---	---	---	---
Larceny, petit	29	24	2	3	---	---	---	4	---	18	---	---
Malicious mischief	1	---	---	1	---	---	---	---	---	---	---	---

TWELFTH JUDICIAL CIRCUIT—Continued.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Manslaughter, first degree	11	8	---	2	1	---	8	---	---	---	--	--
Manslaughter, second degree	8	7	---	1	---	---	---	6	---	1	--	--
Murder, first degree	18	13	2	2	1	1	12	---	---	---	--	--
Murder, second degree	14	11	1	2	---	---	11	---	---	---	--	--
Obstructing public road	1	---	1	---	---	---	---	---	---	---	--	--
Perjury	1	---	---	1	---	---	---	---	---	---	--	--
Playing cards, public place	13	9	2	2	---	---	---	---	---	9	--	--
Presenting gun	5	4	1	---	---	---	---	---	---	4	--	--
Public drunkenness	12	12	---	---	---	---	---	---	---	12	--	--
Receiving stolen property	1	---	---	1	---	---	---	---	---	---	--	--
Removing prop'ty under lien	5	1	2	2	---	---	---	---	---	1	--	--
Removing boundary work	1	---	---	1	---	---	---	---	---	---	--	--
Resisting officer	1	---	---	1	---	---	---	---	---	---	--	--
Robbery	1	1	---	---	---	---	1	---	---	---	--	--
Seduction	4	---	1	3	---	---	---	---	---	---	--	--
Selling liquor to minor	1	---	---	1	---	---	---	---	---	---	--	--
Selling choking horse	1	---	---	1	---	---	---	---	---	---	--	--
Selling mortgaged property	6	2	2	2	---	---	---	---	---	2	--	--
Selling tainted meat	1	---	1	---	---	---	---	---	---	---	--	--
Shooting across public road	4	1	1	2	---	---	---	---	---	1	--	--
Trespass after warning	2	---	1	1	---	---	---	---	---	---	--	--
Unlawful injury to animal	3	1	2	---	---	---	---	---	---	1	--	--
Vagrancy	4	---	1	2	1	---	---	---	---	---	--	--
Violating prohibition law	70	38	15	11	6	---	---	2	---	36	--	--
Violating revenue law	1	1	---	---	---	---	---	---	---	1	--	--
Violating Sunday law	13	8	---	4	1	---	---	---	---	8	--	--
Violating written contract	1	---	---	1	---	---	---	---	---	---	--	--
Violating convict contract	2	2	---	---	---	---	---	2	---	---	--	--
Total	557	370	57	104	26	1	112	43	---	218	--	--

Percentage of convictions in cases disposed of, 66.

Predominant crime, Assault and battery.

THIRTEENTH JUDICIAL CIRCUIT.

Composed of the Counties of Baldwin, Mobile and Washington.
Hon. J. N. Granade, Solicitor, St. Stephens, Ala.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abusive language	28	18	---	8	---	---	---	---	---	18	---	---
Adultery and fornication	4	1	1	2	---	---	---	---	---	1	---	---
Assault	1	1	---	---	---	---	---	---	---	1	---	---
Assault and battery	9	4	3	2	---	---	---	---	---	4	---	---
Assault and battery with weapon	15	10	4	---	1	---	---	---	---	10	---	---
Assault, intent to murder	4	3	1	---	---	---	3	---	---	---	---	---
Assault, intent to ravish	2	1	1	---	---	---	1	---	---	---	---	---
Bigamy	1	---	---	---	1	---	---	---	---	---	---	---
Breaking fence	1	1	---	---	---	---	---	---	---	1	---	---
Burglary	4	3	---	1	---	---	3	---	---	---	---	---
Concealed weapons	7	5	2	---	---	---	---	1	---	4	---	---
Cruelty to animals	1	---	1	---	---	---	---	---	---	---	---	---
Defamation	1	1	---	---	---	---	---	---	---	1	---	---
Disturbing females	3	2	---	1	---	---	---	---	---	2	---	---
Disturbing religious worship	2	1	---	---	1	---	---	---	---	2	---	---
Embezzlement	1	---	---	---	1						---	---
False pretense	1	1	---	---	---	---	---	---	---	1	---	---
Forgery, second degree	1	1	---	---	---	---	1	---	---	---	---	---
Fraudulently marking hogs	1	---	1	---	---	---	---	---	---	---	---	---
Gaming	1	1	---	---	---	---	---	---	---	1	---	---
Justice of the Peace, neglect of duty	2	---	---	2	---	---	---	---	---	---	---	---
Larceny, grand	3	2	1	---	---	---	2	---	---	---	---	---
Larceny, petit	5	4	---	1	---	---	---	1	2	3	---	---
Malicious mischief	1	1	---	---	---	---	---	---	1	---	---	---

THIRTEENTH JUDICIAL CIRCUIT.—Continued.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Manslaughter, first degree	2	2	---	---	---	---	2	---	---	---	---	---
Murder, second degree	4	3	---	1	---	---	3	---	---	---	---	---
Overseer, neglect of duty	1	1	---	---	---	---	---	---	---	1	---	---
Practicing medicine without license	1	---	---	1	---	---	---	---	---	---	---	---
Public drunkenness	2	2	---	---	---	---	---	---	---	2	---	---
Rape	3	2	1	---	---	---	2	---	---	---	---	---
Selling liquor to minor	3	---	---	3	---	---	---	---	---	---	---	---
Selling liquor to convict	1	1	---	---	---	---	---	---	---	1	---	---
Selling mortgaged property	1	---	---	---	1	---	---	---	---	---	---	---
Trespass after warning	5	---	---	5	---	---	---	---	---	---	---	---
Violating game law	1	---	---	---	1	---	---	---	---	---	---	---
Violating prohibition law	13	5	---	8	---	---	---	---	---	5	---	---
Violating revenue law	42	18	5	14	---	---	---	2	---	16	---	---
Violating Sunday law	5	4	---	---	1	---	---	---	---	4	---	---
Total	183	99	21	56	7	---	17	4	3	77	---	---

Percentage of convictions in cases disposed of, 54.

Predominant crime, Violating revenue law.

FOURTEENTH JUDICIAL CIRCUIT.

Composed of the Counties of Walker and Winston.
Hon. W. C. Davis, Solicitor, Jasper, Ala.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to: Death	Penitentiary	Hard Labor	Jail	Fines paid or secured	Insane Asylum	Pardoned
Abduction	1	---	---	---	1	---	---	---	---	---	---	---
Abusive language	12	8	---	4	---	---	---	---	---	8	---	---
Adultery and fornication	6	1	1	4	---	---	---	---	---	1	---	---
Allowing minor to play pool	1	---	---	1	---	---	---	---	---	---	---	---
Assault and battery	10	7	---	3	---	---	---	---	---	7	---	---
Assault and battery with weapon	9	9	---	---	---	---	---	1	1	8	---	---
Assault, intent to murder	14	7	---	6	1	---	3	1	---	3	---	---
Assault, intent to ravish	2	2	---	---	---	---	2	---	---	---	---	---
Bastardy	1	---	---	---	1	---	---	---	---	---	---	---
Burglary	3	3	---	---	---	---	3	---	---	---	---	---
Concealed weapons	14	8	3	3	---	---	---	1	1	6	---	---
Defaulting road hand	3	2	---	1	---	---	---	---	---	2	---	---
Disturbing religious worship	3	1	1	1	---	---	---	---	---	1	---	---
Disturbing school	1	1	---	---	---	---	---	---	---	1	---	---
Embezzlement	2	1	---	1	---	---	---	---	---	1	---	---
False pretense	4	3	---	1	---	---	1	1	---	1	---	---
Forgery, first degree	3	1	---	2	---	---	1	---	---	---	---	---
Fraudulent conveyance	1	---	---	---	1	---	---	---	---	---	---	---
Gaming	10	7	1	2	---	---	---	---	---	7	---	---
Keeping house of prostitut'n	2	---	---	1	1	---	---	---	---	---	---	---
Larceny, grand	3	3	---	---	---	---	2	---	---	1	---	---
Larceny, petit	2	1	---	1	---	---	---	---	---	1	---	---
Manslaughter, first degree	1	1	---	---	---	---	1	---	---	---	---	---
Manslaughter, second degree	4	1	1	2	---	---	1	---	---	---	---	---
Murder, first degree	2	---	1	1	---	---	---	---	---	---	---	---
Murder, second degree	2	2	---	---	---	---	2	---	---	---	---	---

FOURTEENTH JUDICIAL CIRCUIT—Continued.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Practicing medicine without license	5	5	---	---	---	---	---	---	---	5	---	---
Presenting gun	3	---	1	2	---	---	---	---	---	---	---	---
Public drunkenness	25	17	---	8	---	---	---	---	---	17	---	---
Resisting officer	1	1	---	---	---	---	---	---	---	1	---	---
Selling liquor to minor	1	---	1	---	---	---	---	---	---	---	---	---
Selling pistol to minor	1	1	---	---	---	---	---	1	---	---	---	---
Selling mortgaged property	1	1	---	---	---	---	---	---	---	1	---	---
Shooting across public road	3	2	---	1	---	---	---	---	---	2	---	---
Unlawful injury to animal	1	1	---	---	---	---	---	1	---	---	---	---
Violating prohibition law	21	10	1	10	---	---	---	---	1	10	---	---
Violating revenue law	2	1	---	1	---	---	---	---	---	1	---	---
Total	180	108	11	56	5	---	16	6	3	85	---	---

Percentage of convictions in cases disposed of, 60.

Predominant crime, Public drunkenness.

FIFTEENTH JUDICIAL CIRCUIT.

Composed of the Counties of Autauga, Chilton and Elmore.
Hon. D. D. Askew, Solicitor, Wetumpka, Alabama.

CHARACTER OF OFFENSE	No. of cases disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abusive language	12	9	---	3	---	---	---	---	---	9	---	---
Adultery and fornication	7	2	1	4	---	---	---	1	---	1	---	---
Affray	8	6	---	2	---	---	---	1	---	5	---	---
Aiding escaped convict	1	---	---	1	---	---	---	---	---	---	---	---
Arson, first degree	1	1	---	---	---	---	1	---	---	---	---	---
Arson, second degree	2	1	1	---	---	---	1	---	---	---	---	---
Assault and battery	10	8	---	2	---	---	---	2	---	6	---	---
Assault and battery with weapon	21	14	3	4	---	---	---	5	---	9	---	---
Assault, intent to murder	23	15	2	4	2	---	10	1	---	4	---	---
Assault, intent to ravish	2	2	---	---	---	---	2	---	---	---	---	---
Bastardy	4	2	---	2	---	---	---	1	---	1	---	---
Bigamy	1	---	---	1	---	---	---	---	---	---	---	---
Burglary	5	3	1	1	---	---	2	1	---	---	---	---
Burglary and grand larceny	10	5	2	3	---	---	5	---	---	---	---	---
Concealed weapons	18	13	2	3	---	---	---	10	---	3	---	---
Concealing stolen property	4	---	2	2	---	---	---	---	---	---	---	---
Cruelty to animals	1	1	---	---	---	---	---	---	---	1	---	---
Defamation	1	1	---	---	---	---	---	---	---	1	---	---
Defaulting road hand	7	2	2	3	---	---	---	---	---	2	---	---
Disturbing religious worship	7	4	2	1	---	---	---	---	---	4	---	---
Embezzlement	5	2	2	1	---	---	1	---	---	1	---	---
Enticing minor	1	1	---	---	---	---	---	---	---	1	---	---
False pretense	4	1	---	2	1	---	1	---	---	---	---	---
Fraudulent conveyance	2	1	1	---	---	---	1	---	---	---	---	---
Gaming	16	4	4	8	---	---	---	---	---	4	---	---
Giving liquor to minor	3	1	---	2	---	---	---	---	---	1	---	---
Incest	2	---	1	1	---	---	---	---	---	---	---	---

FIFTEENTH JUDICIAL CIRCUIT—Continued.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. of sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Larceny, grand	12	2	1	4	5	---	2	---	---	---	--	--
Larceny, petit	5	2	---	2	1	---	---	1	---	1	--	--
Manslaughter, first degree	1	---	1	---	---	---	---	---	---	---	--	--
Miscegenation	3	3	---	---	---	---	3	---	---	---	--	--
Murder, first degree	21	7	3	10	1	---	7	---	---	---	--	--
Murder, second degree	9	7	1	1	---	---	6	1	---	---	--	--
Practicing medicine without license	2	---	1	1	---	---	---	---	---	---	--	--
Presenting gun	4	3	1	1	---	---	---	---	---	3	--	--
Public drunkenness	2	---	1	1	---	---	---	---	---	---	--	--
Rape	4	2	2	---	---	---	2	---	---	---	--	--
Reckless driving	2	2	---	---	---	---	---	---	---	2	--	--
Robbery	1	---	---	1	---	---	---	---	---	---	--	--
Selling mortgaged property	9	4	3	2	---	---	---	3	---	1	--	--
Shooting across public road	6	4	---	1	1	---	---	1	---	3	--	--
Shooting into passen'r train	1	1	---	---	---	---	1	---	---	---	--	--
Trespass after warning	2	---	---	2	---	---	---	---	---	---	--	--
Unlawful injury to animal	3	---	1	2	---	---	---	---	---	---	--	--
Unlawfully killing hogs	1	1	---	---	---	---	---	---	---	1	--	--
Vagrancy	7	4	1	2	---	---	---	---	---	4	--	--
Violat'g contract with surety confessed judgment	1	1	---	---	---	---	---	1	---	---	--	--
Violating prohibition law	4	---	---	---	---	---	---	---	---	---	--	--
Violating revenue law	47	18	4	24	1	---	---	4	---	14	--	--
Violating fish law	2	1	---	1	---	---	---	---	---	1	--	--
Violating Sunday law	1	1	---	---	---	---	---	---	---	1	--	--
Violating written contract	7	4	---	1	2	---	1	1	---	2	--	--
Total	335	167	46	108	14	---	46	34	---	85	--	--

Percentage of convictions in cases disposed of, 50.

Predominant crime, Violating revenue law.

SIXTEENTH JUDICIAL CIRCUIT.

Composed of the Counties of Blount, Etowah and St. Clair.
Hon. George W. Darden, Solicitor, Oneonta, Alabama.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abandonment	1	1	---	---	---	---	---	---	---	1	---	---
Abusive language	10	8	---	2	---	---	---	---	---	8	---	---
Adultery and fornication	4	1	2	1	---	---	---	1	---	---	---	---
Affray	1	---	---	1	---	---	---	---	---	---	---	---
Assault	2	1	1	---	---	---	---	---	---	1	---	---
Assault and battery	12	7	3	2	---	---	---	---	---	7	---	---
Assault and battery with weapon	17	10	5	2	---	---	---	---	---	10	---	---
Assault, intent to murder	3	1	2	---	---	---	1	---	---	---	---	---
Assault, intent to ravish	1	---	1	---	---	---	---	---	---	---	---	---
Bastardy	2	2	---	---	---	---	---	---	---	2	---	---
Bigamy	1	---	---	---	1	---	---	---	---	---	---	---
Concealed weapons	20	10	6	2	2	---	---	1	---	9	---	---
Conspiracy	1	---	1	---	---	---	---	---	---	---	---	---
Crime against nature	1	---	1	---	---	---	---	---	---	---	---	---
Cruelty to animals	1	---	1	---	---	---	---	---	---	---	---	---
Defamation	1	---	---	---	1	---	---	---	---	---	---	---
Defaulting road hand	2	---	1	1	---	---	---	---	---	---	---	---
Disposing property under lien	1	---	---	1	---	---	---	---	---	---	---	---
Disposing liquor near church	1	1	---	---	---	---	---	---	---	1	---	---
Disturbing females	2	2	---	---	---	---	---	---	---	2	---	---
Disturbing religious worship	3	1	2	---	---	---	---	---	---	1	---	---
Escape	1	---	---	1	---	---	---	---	---	---	---	---
False pretense	2	---	1	1	---	---	---	---	---	---	---	---

SIXTEENTH JUDICIAL CIRCUIT—Continued.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Gaming	3	2	---	---	1	---	---	---	---	2	---	---
Giving liquor to minor	1	---	1	---	---	---	---	---	---	---	---	---
Larceny, grand	3	---	2	1	---	---	---	---	---	---	---	---
Larceny, petit	6	---	1	5	---	---	---	---	---	---	---	---
Lottery	2	---	1	1	---	---	---	---	---	---	---	---
Malfeasance in office	2	---	---	2	---	---	---	---	---	---	---	---
Manslaughter, first degree	2	2	---	---	---	---	2	---	---	---	---	---
Manslaughter, second degree	5	2	3	---	---	---	---	1	1	---	---	---
Murder, second degree	1	1	---	---	---	---	1	---	---	---	---	---
Obstructing public road	2	2	---	---	---	---	---	---	---	2	---	---
Permitting minor to play pool	1	---	---	1	---	---	---	---	---	---	---	---
Playing cards, public place	1	1	---	---	---	---	---	---	---	1	---	---
Practicing medicine without license	1	1	---	---	---	---	---	---	---	1	---	---
Presenting gun	1	1	---	---	---	---	---	---	---	1	---	---
Public drunkenness	17	13	3	1	---	---	---	---	---	13	---	---
Selling mortgaged property	1	---	---	1	---	---	---	---	---	---	---	---
Shooting across public road	1	1	---	---	---	---	---	---	---	1	---	---
Trespass after warning	4	1	2	1	---	---	---	---	---	1	---	---
Violating prohibition law	11	2	6	3	---	---	---	---	---	2	---	---
Violating stock law	4	---	1	3	---	---	---	---	---	---	---	---
Total	159	74	47	33	5	---	4	3	---	67	---	---

Percentage of convictions in cases disposed of, 47.

Predominant crime, carrying concealed weapons.

CITY COURT OF ANDALUSIA.

Hon. L. H. Brassell, Solicitor, Florala, Ala.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abusive language	66	39	3	22	2	---	---	2	---	37	---	---
Adultery and fornication	9	1	4	3	1	---	---	---	---	1	---	---
Aiding escape	1	---	---	1	---	---	---	---	---	---	---	---
Assault	3	2	---	1	---	---	---	---	---	2	---	---
Assault and battery	50	33	6	11	---	---	---	1	---	32	---	---
Assault and battery with weapon	1	---	1	---	---	---	---	---	---	---	---	---
Changing name	1	---	1	---	---	---	---	---	---	---	---	---
Concealed weapons	49	32	6	10	1	---	---	1	---	31	---	---
Cruelty to animals	1	1	---	---	---	---	---	---	---	1	---	---
Defamation	1	---	---	1	---	---	---	---	---	---	---	---
Defaulting road hand	4	2	1	1	---	---	---	---	---	2	---	---
Destroying fence	2	1	---	1	---	---	---	---	---	1	---	---
Discharging firearms unlawfully	1	---	---	1	---	---	---	---	---	---	---	---
Disturbing females	3	2	---	1	---	---	---	---	---	2	---	---
Disturbing religious worship	2	---	---	2	---	---	---	---	---	---	---	---
Embezzlement	8	---	1	7	---	---	---	---	---	---	---	---
Enticing labor	1	---	---	1	---	---	---	---	---	---	---	---
Escape	1	---	---	1	---	---	---	---	---	---	---	---
False pretence	13	7	2	4	---	---	---	---	---	7	---	---
False exhibition of cotton sample	1	---	1	---	---	---	---	---	---	---	---	---
Gaming	42	35	2	4	1	---	---	6	---	29	---	---
Larceny, petit	16	8	2	5	1	---	---	1	---	7	---	---
Malicious mischief	5	1	1	3	---	---	---	---	---	1	---	---

CITY COURT OF ANDALUSIA.—Continued.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Obstructing public road	1	---	1	---	---	---	---	---	---	---	--	--
Presenting gun	9	---	3	6	---	---	---	---	---	---	--	--
Public drunkenness	20	17	3	---	---	---	---	---	---	17	--	--
Resisting officer	3	---	1	2	---	---	---	---	---	---	--	--
Selling mortgaged property	4	3	---	1	---	---	---	3	---	---	--	--
Shooting across public road	2	1	---	1	---	---	---	---	---	1	--	--
Trespass after warning	10	1	4	4	1	---	---	---	---	1	--	--
Vagrancy	3	1	---	2	---	---	---	---	---	1	--	--
Violating game law	35	13	3	19	---	---	---	---	---	13	--	--
Violating prohibition law	41	26	4	11	---	---	---	10	---	16	--	--
Violating written contract	1	1	---	---	---	---	---	---	---	1	--	--
Total	410	227	50	126	7	---	---	24	---	203	--	--

Percentage of convictions in cases disposed of, 55.

Predominant crime, abusive language.

CITY COURT OF ANNISTON.

Hon. W. C. Tunstall, Jr., Solicitor, Anniston, Ala.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to: Death	Penitentiary	Hard Labor	Jail	Fines paid or secured	Insane Asylum	Pardoned
Abortion	1	1	---	---	---	---	1	---	---	---	---	---
Abusive language	13	8	3	2	---	---	---	1	---	7	---	---
Adultery and fornication	1	1	---	---	---	---	---	---	---	1	---	---
Affray	1	1	---	---	---	---	---	---	---	1	---	---
Arson, first degree	2	---	---	2	---	---	---	---	---	---	---	---
Assault and battery	3	2	1	---	---	---	---	---	---	2	---	---
Assault with weapon	27	20	1	5	1	---	---	4	---	16	---	---
Assault, intent to murder	6	3	3	---	---	---	3	---	---	---	---	---
Assault, intent to ravish	2	1	---	1	---	---	1	---	---	---	---	---
Bigamy	1	---	---	1	---	---	---	---	---	---	---	---
Burglary	5	3	---	2	---	---	3	---	---	---	---	---
Burglary and grand larceny (2 to reformatory)	4	2	1	1	---	---	---	---	---	---	---	---
Burglary, grand larceny and receiving stolen goods	2	1	---	1	---	---	1	---	---	---	---	---
Burglary in railroad car	2	2	---	---	---	---	2	---	---	---	---	---
Carnal knowledge, girl over 10	1	1	---	---	---	---	---	---	---	1	---	---
Concealed weapons	17	9	3	5	---	---	---	2	---	7	---	---
Crime against nature	1	1	---	---	---	---	1	---	---	---	---	---
Cruelty to animals	2	---	1	1	---	---	---	---	---	---	---	---
Disposing property under lien	6	3	1	2	---	---	---	---	---	3	---	---
Disturbing religious worship	1	---	---	1	---	---	---	---	---	---	---	---
Embezzlement	2	1	---	1	---	---	---	1	---	---	---	---
Forgery, first degree	6	4	---	2	---	---	4	---	---	---	---	---
Incest	1	---	---	1	---	---	---	---	---	---	---	---
Keeping store open on Sunday	1	1	---	---	---	---	---	---	---	1	---	---

CITY COURT OF ANNISTON.—Continued.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Larceny, grand	7	3	3	1	---	---	3	---	---	---	--	--
Larceny, petit	4	4	---	---	---	---	---	---	---	4	--	--
Manslaughter, first degree	2	2	---	---	---	---	2	---	---	---	--	--
Murder, first degree	11	4	4	3	---	---	4	---	---	---	--	--
Obtaining money under false pretense	5	2	1	2	---	---	2	---	---	---	--	--
Perjury	1	---	1	---	---	---	---	---	---	---	--	--
Permitting minor to play pool	1	---	---	1	---	---	---	---	---	---	--	--
Presenting gun	2	---	1	1	---	---	---	---	---	---	--	--
Rape	1	---	---	1	---	---	---	---	---	---	--	--
Receiving stolen property	3	2	1	---	---	---	---	2	---	---	--	--
Selling liquor to minor	7	---	6	1	---	---	---	---	---	---	--	--
Shooting across public road	2	1	---	1	---	---	---	---	---	1	--	--
Violating revenue law	30	18	3	9	---	---	---	7	---	11	--	--
Total	181	99	34	48	---	---	27	17	---	55	--	--

Percentage of convictions in cases disposed of, 56.

Predominant crime, assault with weapon.

COUNTY COURT OF CHOCTAW COUNTY.

Hon. W. H. Lindsey, Solicitor, Butler, Ala.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abusive language	12	5	1	6	---	---	---	1	---	4	---	---
Adultery and fornication	8	1	---	7	---	---	---	---	---	1	---	---
Assault and battery	17	13	3	1	---	---	---	---	---	13	---	---
Concealed weapons	17	15	1	1	---	---	---	1	---	14	---	---
Conspiracy to commit misdemeanor	1	---	1	---	---	---	---	---	---	---	---	---
Disposing property under lien (mortgaged)	3	2	---	1	---	---	---	---	---	2	---	---
Disturbing religious worship	1	---	---	1	---	---	---	---	---	---	---	---
Gaming	12	10	---	2	---	---	---	---	---	10	---	---
Gaming on Sunday	15	15	---	---	---	---	---	---	---	15	---	---
Larceny, petit	5	4	1	---	---	---	---	---	---	4	---	---
Practicing medicine without license	2	2	---	---	---	---	---	---	---	2	---	---
Presenting gun	5	4	---	1	---	---	---	---	---	4	---	---
Public drunkenness	3	3	---	---	---	---	---	---	---	3	---	---
Resisting officer	1	1	---	---	---	---	---	---	---	1	---	---
Sending abusive letter	1	1	---	---	---	---	---	---	---	1	---	---
Trespass after warning	1	1	---	---	---	---	---	---	---	1	---	---
Unlawful injury to animal	2	2	---	---	---	---	---	---	---	2	---	---
Violating game law	3	---	---	3	---	---	---	---	---	---	---	---
Violating prohibition law	1	1	---	---	---	---	---	---	---	1	---	---
Violating Sabbath	1	1	---	---	---	---	---	---	---	1	---	---
Violating written contract	1	1	---	---	---	---	---	---	---	1	---	---
Total	115	85	7	23	---	---	---	2	---	83	---	---

Percentage of convictions in cases disposed of, 74.

Predominant crime, concealed weapons and assault and battery.

COUNTY COURT OF CLARKE COUNTY.

Hon. Q. W. Tucker, Solicitor, Grove Hill, Ala.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines Paid or Secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abduction	1	---	---	1	---	---	---	---	---	---	---	---
Abusive language	26	12	5	8	1	---	---	---	---	12	---	---
Adultery and fornication	5	3	---	2	---	---	---	---	---	3	---	---
Assault and battery	57	37	5	13	2	---	---	2	---	36	---	---
Assault and battery with weapon	14	10	1	3	---	---	---	1	---	10	---	---
Carnal knowledge, girl over 10	1	1	---	---	---	---	---	---	---	1	---	---
Carrying pistol under 21 in. in length	1	1	---	---	---	---	---	---	---	1	---	---
Concealed weapons	32	19	5	7	1	---	---	3	---	17	---	---
Defamation	4	---	1	2	1	---	---	---	---	---	---	---
Defaulting road hand	1	---	---	1	---	---	---	---	---	---	---	---
Defaulting bail	1	1	---	---	---	---	---	---	---	1	---	---
Disturbing religious worship	10	1	4	4	1	---	---	---	---	1	---	---
Enticing labor	1	1	---	---	---	---	---	---	---	1	---	---
Escape	2	1	---	1	---	---	---	1	---	1	---	---
False pretense	7	3	1	3	---	---	---	---	---	3	---	---
Gaming	17	13	---	3	1	---	---	---	---	13	---	---
Killing hog	1	---	---	1	---	---	---	---	---	---	---	---
Keeping house of prostitution	1	---	---	---	1	---	---	---	---	---	---	---
Larceny, petit	17	10	1	4	2	---	---	7	---	9	---	---
Marking hog	1	---	---	1	---	---	---	---	---	---	---	---
Obtaining board by fraud	1	---	1	---	---	---	---	---	---	---	---	---
Obstructing public road	1	---	---	---	1	---	---	---	---	---	---	---
Presenting gun	2	---	---	2	---	---	---	---	---	---	---	---
Public drunkenness	30	13	3	12	2	---	---	---	---	13	---	---

COUNTY COURT OF CLARKE COUNTY.—Continued.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Resisting officer	2	2	---	---	---	---	---	1	---	2	---	---
Selling liquor to minor	1	1	---	---	---	---	---	---	---	1	---	---
Selling mortgaged property	3	---	---	2	1	---	---	---	---	---	---	---
Temporary use of animal	1	1	---	---	---	---	---	---	---	1	---	---
Throwing rock at train	1	---	---	1	---	---	---	---	---	---	---	---
Trespass after warning	2	---	---	2	---	---	---	---	---	---	---	---
Unlawful injury to animal	6	2	2	2	---	---	---	---	---	2	---	---
Vagrancy	6	3	---	3	---	---	---	---	---	3	---	---
Violating cont't with surety, confessed judgment	4	2	---	2	---	---	---	2	---	---	---	---
Violating prohibition law	106	42	18	33	13	---	---	8	---	36	---	---
Violating revenue law	6	1	5	---	---	---	---	---	---	1	---	---
Violating Sunday law	3	---	1	2	---	---	---	---	---	---	---	---
Violating written contract	4	3	---	1	---	---	---	1	---	3	---	---
Total	379	183	55	113	28	---	---	26	---	172	---	---

Percentage of convictions in cases disposed of, 48.

Predominant crime, Violating prohibition law.

COUNTY COURT OF CLAY COUNTY.

Hon. E. J. Garrison, Solicitor, Ashland, Alabama.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abusive language	40	29	5	4	2	---	---	---	---	29	--	--
Adultery and fornication	3	---	---	1	2	---	---	---	---	---	--	--
Affray	3	2	---	1	---	---	---	---	---	2	--	--
Assault	37	23	4	8	2	---	---	---	---	23	--	--
Assault and battery	5	3	2	---	---	---	---	---	---	3	--	--
Breaking fence	1	---	1	---	---	---	---	---	---	---	--	--
Burglary	1	1	---	---	---	---	1	---	---	---	--	--
Concealed weapons	31	20	4	7	---	---	---	---	---	20	--	--
Defaulting road hand	4	2	---	2	---	---	---	---	---	2	--	--
Destroying mile post	1	1	---	---	---	---	---	---	---	1	--	--
Disturbing females	3	2	---	1	---	---	---	---	---	2	--	--
Disturbing religious worship	9	3	3	3	---	---	---	---	---	3	--	--
Enticing away child	1	---	---	1	---	---	---	---	---	---	--	--
Escape	3	1	---	2	---	---	---	---	---	1	--	--
Enticing servant	1	---	---	1	---	---	---	---	---	---	--	--
False pretense	2	---	1	1	---	---	---	---	---	---	--	--
Forgery, third degree	1	1	---	---	---	---	---	1	---	---	--	--
Gaming	3	2	---	1	---	---	---	---	---	2	--	--
Keeping disorderly house	1	---	---	1	---	---	---	---	---	---	--	--
Larceny, grand	1	1	---	---	---	---	1	---	---	---	--	--
Larceny, petit	10	10	---	---	---	---	---	---	5	10	--	--
Manslaughter, first degree	1	1	---	---	---	---	1	---	---	---	--	--
Manslaughter, second degree	1	1	---	---	---	---	1	---	---	---	--	--
Murder, first degree	1	1	---	---	---	---	1	---	---	---	--	--
Murder, second degree	3	2	1	---	---	---	2	---	---	---	--	--
Perjury	1	---	1	---	---	---	---	---	---	---	--	--
Presenting gun	4	2	2	---	---	---	---	---	---	2	--	--
Public drunkenness	11	9	---	2	---	---	---	---	---	9	--	--

COUNTY COURT OF CLAY COUNTY—Continued.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Seduction	1	---	---	1	---	---	---	---	---	---	--	--
Selling liquor to minor	41	19	5	16	1	---	---	---	---	19	--	--
Shooting across public road	11	8	1	2	---	---	---	---	---	8	--	--
Shooting on Sunday	3	3	---	---	---	---	---	---	---	3	--	--
Trespass after warning	6	2	3	1	---	---	---	---	---	2	--	--
Unlawful injury to animal	1	---	---	1	---	---	---	---	---	---	--	--
Vagrancy	1	---	---	1	---	---	---	---	---	---	--	--
Violating cont't with surety confessed judgment	1	1	---	---	---	---	---	---	---	1	--	--
Soliciting order for whiskey	1	---	1	---	---	---	---	---	---	---	--	--
Violating Sunday law	3	3	---	---	---	---	---	---	---	3	--	--
Violating sunrise and sunset law	1	1	---	---	---	---	---	---	---	1	--	--
Total	253	154	34	58	7	---	7	1	5	146	--	--

Percentage of convictions in cases disposed of. 61.

Predominant crime, Selling liquor to minor.

COUNTY COURT OF CLEBURNE COUNTY.

Hon. W. B. Merrill, Solicitor, Heflin, Alabama.
(Abolished May 1st, 1907.)

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abusive language	16	13	2	1	---	---	---	---	---	13	--	--
Affray	2	1	1	---	---	---	---	---	---	1	--	--
Assault and battery	5	5	---	---	---	---	---	---	---	5	--	--
Assault and battery with weapon	4	4	---	---	---	---	---	---	---	4	--	--
Concealed weapons	7	3	1	3	---	---	---	---	---	3	--	--
Gaming	2	2	---	---	---	---	---	---	---	2	--	--
Larceny, petit	2	2	---	---	---	---	---	---	2	2	--	--
Public drunkenness	24	20	1	3	---	---	---	---	---	20	--	--
Selling liquor to minor	2	1	---	1	---	---	---	---	---	1	--	--
Shooting across public road	2	2	---	---	---	---	---	---	---	2	--	--
Violating revenue law	16	8	1	7	---	---	---	---	---	8	--	--
Total	83	62	6	15	---	---	---	---	2	61	--	--

Percentage of convictions in cases disposed of, 75.
Predominant crime, Public drunkenness.

CITY COURT OF GADSDEN.

Hon. W. J. Boykin, Solicitor, Gadsden, Alabama.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abandonment	1	---	---	1	---	---	---	---	---	---	---	---
Abusive language	79	67	4	6	2	---	---	6	---	61	---	---
Adultery and fornication	10	9	---	1	---	---	---	2	---	7	---	---
Affray	6	6	---	---	---	---	---	---	---	6	---	---
Assault and battery	40	30	2	7	1	---	---	4	---	26	---	---
Assault and battery with weapon	46	38	4	4	---	---	---	9	---	30	---	---
Assault, intent to murder	12	5	1	4	2	---	5	---	---	---	---	---
Bastardy	2	---	---	1	1	---	---	---	---	---	---	---
Bigamy	2	2	---	---	---	---	1	1	---	---	---	---
Burglary	11	3	1	2	---	---	5	---	2	---	*	---
Concealed weapons	57	48	5	3	1	---	---	9	---	39	---	---
Concealing stolen property	1	---	---	1	---	---	---	---	---	---	---	---
Conspiracy	2	1	1	---	---	---	---	---	---	1	---	---
Cruelty to animals	2	1	---	1	---	---	---	---	---	1	---	---
Cutting boat from moorings	1	1	---	---	---	---	---	1	---	---	---	---
Defacing public building	1	1	---	---	---	---	---	1	---	---	---	---
Defamation	2	1	1	---	---	---	---	---	---	1	---	---
Disorderly house	2	2	---	---	---	---	---	---	---	2	---	---
Disturbing females	4	2	---	2	---	---	---	---	---	2	---	---
Disturbing religious worship	20	18	2	---	---	---	---	---	---	18	---	---
Embezzlement	1	1	---	---	---	---	---	---	---	1	---	---
False pretense	6	3	---	2	1	---	---	2	---	1	---	---
Forgery, second degree	4	3	---	---	1	---	2	1	---	---	---	---
Gaming	45	42	1	2	---	---	---	5	---	37	---	---
Injury to Telephone line	1	1	---	---	---	---	---	---	---	1	---	---
Keeping house of ill fame	3	2	1	---	---	---	---	1	---	1	---	---
Larceny, grand	12	12	---	---	---	---	9	3	---	---	---	---

* One to Reforamtory.

CITY COURT OF GADSDEN—Continued.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Larceny, petit	24	20	1	3	---	---	---	14	1	5	---	---
Malicious mischief	1	---	1	---	---	---	---	---	---	---	---	---
Manslaughter, first degree	3	2	1	---	---	---	2	---	---	---	---	---
Murder, first degree	10	5	2	3	---	1	4	---	---	---	---	---
Murder, second degree	10	7	2	1	---	---	7	---	---	---	---	---
Presenting gun	8	7	1	---	---	---	---	3	---	4	---	---
Public drunkenness	35	27	3	5	---	---	---	1	---	26	---	---
Robbery	2	1	---	1	---	---	1	---	---	---	---	---
Seduction	1	---	1	---	---	---	---	---	---	---	---	---
Selling mortgaged property	4	1	2	1	---	---	---	---	---	1	---	---
Shooting across public road	15	8	2	5	---	---	---	---	---	8	---	---
Temporary use of animal	1	1	---	---	---	---	---	1	---	---	---	---
Throwing at passen'r train	1	1	---	---	---	---	1	---	---	---	---	---
Trespass after warning	10	10	---	---	---	---	---	---	---	10	---	---
Vagrancy	17	14	---	3	---	---	---	11	---	3	---	---
Violating prohibition law	21	15	---	6	---	---	---	15	---	2	---	---
Violating revenue law	56	44	9	3	---	---	---	30	---	14	---	---
Violating stock law	9	7	---	2	---	---	---	---	---	7	---	---
Violating game law	3	1	---	2	---	---	---	---	---	1	---	---
Violating Sunday law	1	1	---	---	---	---	---	---	---	1	---	---
Total	605	478	48	70	9	1	37	120	3	317	---	---

Percentage of convictions in cases disposed of, 79.
Predominant crime, Abusive language.

COUNTY COURT OF HALE COUNTY.

Hon. Thos. E. Knight, Solicitor, Greensboro, Alabama.

CHARACTER OF OFFENSE	No. of cases disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abandonment	1	---	---	1	---	---	---	---	---	---	---	---
Abusive language	9	7	---	1	1	---	---	1	---	6	---	---
Assault and battery	24	22	1	1	---	---	---	---	---	22	---	---
Assault and battery with weapon	3	2	---	1	---	---	---	---	---	2	---	---
Concealed weapons	25	17	1	6	1	---	---	2	---	15	---	---
Cruelty to animals	1	1	---	---	---	---	---	---	---	1	---	---
Defaulting road hand	2	1	---	1	---	---	---	---	---	1	---	---
Disposing prop'ty under lien	1	1	---	---	---	---	---	---	---	1	---	---
Disturbing religious wirship	6	3	---	3	---	---	---	1	---	2	---	---
False pretense	2	1	1	---	---	---	---	---	---	1	---	---
Gaming	3	1	---	2	---	---	---	---	---	1	---	---
Giving liquor to minor	1	---	1	---	---	---	---	---	---	---	---	---
Larceny, petit	8	8	---	---	---	---	---	---	---	8	---	---
Malicious mischief	1	1	---	---	---	---	---	---	---	1	---	---
Manslaughter, second degree	1	1	---	---	---	---	---	---	1	---	---	---
Practicing medicine without license	1	---	---	1	---	---	---	---	---	---	---	---
Public drunkenness	1	---	---	1	---	---	---	---	---	---	---	---
Resisting officer	9	3	---	7	---	---	---	1	---	2	---	---
Selling diseased meat	1	1	---	---	---	---	---	---	---	1	---	---
Trespass after warning	3	1	1	1	---	---	---	---	---	1	---	---
Vagrancy	8	6	---	2	---	---	---	3	---	3	---	---
Violating contract with surety, confessed judgment	1	---	1	---	---	---	---	---	---	---	---	---
Violating prohibition law	44	20	6	11	7	---	---	1	---	19	---	---
Total	156	103	12	32	9	---	---	9	1	87	---	---

Percentage of convictions in cases disposed of, 66.

Predominant crime, Violating prohibition law.

CRIMINAL COURT OF JEFFERSON COUNTY.

Hon. H. P. Heflin, Solicitor, Birmingham, Alabama.
(Hon. John McQueen, Solicitor of the Tenth Circuit, is by law Assistant Solicitor in this Court.)

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. of sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abandonment	8	---	4	4	---	---	---	---	---	---		--
Abusive language	751	266	157	271	57	---	---	88	18	160	--	--
Accessory after the fact	1	---	---	1	---	---	---	---	---	1	--	--
Adultery and fornication	66	6	11	42	7	---	---	4	1	1	--	--
Affray	20	14	3	3	---	---	---	5	---	9	--	--
Arson, second degree	3	---	1	2	---	---	---	---	---	---	--	--
Assault	4	2	1	---	1	---	---	1	---	1	--	--
Assault and battery	752	248	164	274	66	---	---	96	4	148	--	--
Assault and battery with weapon	283	96	70	94	23	---	---	55	2	39	--	--
Assault, intent to murder	187	94	33	43	17	---	15	61	---	16	--	--
Assault, intent to ravish	4	1	---	3	---	---	1	---	---	---	--	--
Assault, intent to rob	6	2	2	2	---	---	---	1	---	1	--	--
Attempt at arson	1	---	---	1	---	---	---	---	---	---	--	--
Betting in public places	6	---	---	6	---	---	---	---	---	---	--	--
Betting on election	28	---	18	10	---	---	---	---	---	---	--	--
Bigamy	2	1	---	1	---	---	---	1	---	---	--	--
Breaking fence	1	---	---	1	---	---	---	---	---	---	--	--
Bribery	2	---	2	---	---	---	---	---	---	---	--	--
Burglary	49	36	6	6	1	---	8	21	---	8	--	--
Burglary and grand larceny	138	82	12	32	12	---	44	38	---	---	--	--
Carnal knowledge, girl under 10	3	---	---	2	1	---	---	---	---	---	--	--
Changing name	23	9	6	5	3	---	---	5	---	4	--	--
Concealed weapons	248	97	64	77	10	---	---	70	---	25	--	--
Conducting lottery	79	---	---	79	---	---	---	---	---	---	--	--

CRIMINAL COURT OF JEFFERSON COUNTY—Continued.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Conspiracy	6	---	2	4	---	---	---	---	---	---	---	---
Concealing felon	1	---	1	---	---	---	---	---	---	---	---	---
Crime against nature	1	1	---	---	---	---	---	1	---	---	---	---
Decoying child	12	---	9	3	---	---	---	---	---	---	---	---
Defacing public building	3	---	2	1	---	---	---	---	---	---	---	---
Defamation	64	2	29	26	7	---	---	---	---	2	---	---
Defaulting road hand	2	---	---	1	1	---	---	---	---	---	---	---
Discharging gun in passenger train	1	1	---	---	---	---	---	1	---	---	---	---
Disturbing females	4	1	1	2	---	---	---	---	---	1	---	---
Disturbing school	1	---	---	1	---	---	---	---	---	1	---	---
Disturbing religious worship	23	1	16	6	---	---	---	---	---	1	---	---
Embezzlement	39	8	6	14	11	---	3	2	2	---	---	---
Enticing labor	3	---	1	2	---	---	---	---	---	---	---	---
Escape	11	1	1	7	2	---	---	1	---	---	---	---
False pretense	55	17	9	23	5	---	---	14	---	3	---	---
Forgery, first degree	31	6	4	15	5	---	6	---	---	---	---	---
Forming trust	5	---	---	5	---	---	---	---	---	---	---	---
Fraudulent conveyance	1	---	---	1	---	---	---	---	---	---	---	---
Gaming	268	125	64	79	---	---	---	44	---	81	---	---
Gaming on Sunday	168	112	17	30	---	---	---	25	---	77	---	---
Giving liquor to minor	3	---	---	3	---	---	---	---	---	---	---	---
Incest	1	---	---	1	---	---	---	---	---	---	---	---
Keeping disorderly house	3	1	---	2	---	---	---	---	---	1	---	---
Keeping gaming table	21	4	8	5	4	---	---	---	1	3	---	---
Keeping house of prostitut'n	3	---	---	3	---	---	---	---	---	---	---	---
Larceny, grand	333	212	47	102	31	---	64	133	10	2	---	---
Larceny, petit	214	89	43	69	13	---	---	74	10	9	---	---
Libel	2	---	---	2	---	---	---	---	---	---	---	---
Mayhem	2	2	---	---	---	---	---	2	---	---	---	---
Malicious mischief	32	4	10	17	1	---	---	1	---	3	---	---

CRIMINAL COURT OF JEFFERSON COUNTY—Continued.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Manslaughter, first degree	4	---	3	1	---	---	---	---	---	---	---	---
Miscegenation	7	5	---	2	---	---	5	---	---	---	---	---
Murder, first degree	125	50	32	30	13	3	47	---	---	---	---	---
Nuisance	1	---	---	1	---	---	---	---	---	---	---	---
Obstructing railroad	1	---	---	1	---	---	---	---	---	---	---	---
Perjury	6	1	1	4	---	---	1	---	---	---	---	---
Permit'g hog to run at large	2	---	2	---	---	---	---	---	---	---	---	---
Playing cards, public place	10	1	---	9	---	---	---	---	---	1	---	---
Permitting minor play pool	20	2	5	13	---	---	---	1	---	1	---	---
Poisoning well	4	1	---	1	2	---	1	---	---	---	---	---
Practicing medicine without license	1	1	---	---	---	---	---	---	1	---	---	---
Presenting gun	30	8	6	15	1	---	---	2	1	5	---	---
Public drunkenness	111	58	4	42	7	---	20	4	31	---	---	---
Rape	7	1	3	2	1	---	---	1	---	---	---	---
Receiving stolen property	34	12	5	16	1	---	4	6	1	---	---	---
Resisting officer	24	8	3	10	3	---	---	5	---	3	---	---
Robbery	38	14	6	15	3	---	12	1	---	---	---	---
Seduction	2	---	---	2	---	---	---	---	---	---	---	---
Selling mortgaged property	13	2	3	7	1	---	---	2	---	---	---	---
Shooting across public road	15	4	7	4	---	---	---	---	---	4	---	---
Taking property without legal process	2	---	---	2	---	---	---	---	---	---	---	---
Temporary use of animal	2	1	1	---	---	---	---	---	---	1	---	---
Throwing rocks at passenger train	2	---	---	---	2	---	---	---	---	---	---	---
Trespass after warning	92	12	22	38	18	---	---	6	---	6	---	---
Threatening to kill	1	---	---	---	1	---	---	---	---	---	---	---
Unlawful injury to animal	9	---	2	5	2	---	---	---	---	---	---	---
Vagrancy	425	96	114	182	33	---	---	48	6	42	---	---

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Violating election law	1	1	---	---	---	---	---	---	---	1	---	---
Violating prohibition law	49	21	9	13	6	---	---	15	---	6	---	---
Violating automobile law	8	5	2	1	---	---	---	---	1	4	---	---
Violating revenue law	346	106	49	176	15	---	---	28	---	78	---	---
Violating game law	4	2	---	2	---	---	---	---	---	2	---	---
Violating Sunday law	142	68	35	25	13	---	---	19	1	48	---	---
Total	6516	2126	1136	1956	398	3	231	980	90	794	---	---

Percentage of convictions in cases disposed of, 39.

Predominant crime, Assault and battery.

LAW AND EQUITY COURT OF LEE COUNTY.

Hon. C. A. L. Samford, Solicitor, Opelika, Ala.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abusive language	11	6	4	1	---	---	---	4	---	2	---	---
Accessory after the fact	1	1	---	---	---	---	---	---	---	1	---	---
Adultery and fornication	11	7	1	3	---	---	---	3	---	4	---	---
Arson, first degree	1	---	---	1	---	---	---	---	---	---	---	---
Arson, third degree	1	1	---	---	---	---	---	1	---	---	---	---
Assault and battery	29	22	6	1	---	---	---	9	---	13	---	---
Assault, intent to murder	11	8	3	---	---	---	8	---	---	---	---	---
Assault, intent to ravish	2	2	---	---	---	---	2	---	---	---	---	---
Assisting escaped convict	1	---	1	---	---	---	---	---	---	---	---	---
Attempt to convict felony	2	---	1	1	---	---	---	---	---	---	---	---
Bastardy	1	---	---	1	---	---	---	---	---	---	---	---
Betting in public places	1	---	1	---	---	---	---	---	---	---	---	---
Bringing stolen property into the State	2	1	1	---	---	---	---	1	---	---	---	---
Burglary	6	6	---	---	---	---	6	---	---	---	---	---
Carrying off rails from land of another	1	---	---	1	---	---	---	---	---	---	---	---
Concealed weapons	23	15	2	5	1	---	---	8	---	7	---	---
Carrying on lottery	1	1	---	---	---	---	---	1	---	---	---	---
Conspiracy to commit felony	2	---	2	---	---	---	---	---	---	---	---	---
Cruelty to animals	1	---	1	---	---	---	---	---	---	---	---	---
Defamation	1	1	---	---	---	---	---	---	---	1	---	---
Defaulting road hand	1	1	---	---	---	---	---	---	---	1	---	---
Disposing prop'ty under lien	9	6	2	1	---	---	---	---	---	6	---	---
Disturbing religious worship	7	4	2	1	---	---	---	1	---	3	---	---
Embezzlement	5	2	1	2	---	---	1	1	---	---	---	---
False pretense	3	1	---	2	---	---	---	1	---	---	---	---
Forgery, second degree	1	---	1	---	---	---	---	---	---	---	---	---
Forgery, third degree	2	---	---	2	---	---	---	---	---	---	---	---
Fraudulently packing cotton	2	1	---	1	---	---	---	---	---	1	---	---

LAW AND EQUITY COURT OF LEE COUNTY—Continued.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Larceny, grand	8	6	---	2	---	---	---	6	---	---	---	---
Larceny, petit	28	16	4	8	---	---	---	8	---	8	---	---
Malicious mischief	1	1	---	---	---	---	---	1	---	---	---	---
Manslaughter, first degree	1	1	---	---	---	---	1	---	---	---	---	---
Murder, first degree	6	5	1	---	---	---	5	---	---	---	---	---
Murder, second degree	3	2	1	---	---	---	2	---	---	---	---	---
Obtain'g money under false pretense	6	1	3	2	---	---	---	1	---	---	---	---
Obtain'g board by false pre tense	1	---	---	1	---	---	---	---	---	---	---	---
Permit'g minor to play pool	2	---	2	---	---	---	---	---	---	---	---	---
Playing cards, public place	1	1	---	---	---	---	---	---	---	1	---	---
Presenting gun	2	1	---	1	---	---	---	---	---	1	---	---
Public drunkenness	1	1	---	---	---	---	---	1	---	---	---	---
Rape	1	---	1	---	---	---	---	---	---	---	---	---
Selling mortgaged property	8	1	7	---	---	---	---	---	---	1	---	---
Sending threatening letter	1	---	1	---	---	---	---	---	---	---	---	---
Shooting across public road	11	7	3	1	---	---	---	1	---	6	---	---
Temporary use of animal	1	1	---	---	---	---	---	---	---	1	---	---
Trespass after warning	10	2	2	6	---	---	---	---	---	2	---	---
Unlawful injury to animal	3	---	3	---	---	---	---	---	---	---	---	---
Unlawful assembly	1	1	---	---	---	---	---	---	---	1	---	---
Unlawfully riding in train	35	32	3	---	---	---	---	23	1	8	---	---
Vagrancy	18	10	5	3	---	---	---	5	---	5	---	---
Violating prohibition law	8	5	2	1	---	---	---	1	---	4	---	---
Violating revenue law	1	---	1	---	---	---	---	---	---	---	---	---
Violating Sunday law	9	9	---	---	---	---	---	1	---	8	---	---
Violating written contract	1	1	---	---	---	---	---	1	---	---	---	---
Total	307	190	68	48	1	---	25	79	1	85	---	---

Percentage of convictions in cases disposed of, 62.

Predominant crime, Unlawfully riding on train.

LAW AND EQUITY COURT OF MADISON COUNTY..

Hon. J. H. Pride, Solicitor, Huntsville, Alabama.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abusive language	13	8	---	5	---	---	---	4	---	4	---	---
Adultery and fornication	2	2	---	---	---	---	---	1	1	---	---	---
Assault	6	4	1	1	---	---	---	1	---	3	---	---
Assault and battery	9	7	---	2	---	---	---	1	---	6	---	---
Assault and battery with weapon	19	14	1	4	---	---	---	2	---	12	---	---
Assault, intent to murder	7	3	---	4	---	---	2	1	---	---	---	---
Burglary	9	7	---	2	---	---	4	3	---	---	---	---
Buying liquor for minor	1	---	---	1	---	---	---	---	---	---	---	---
Concealed weapons	30	22	---	7	---	---	---	4	---	18	---	---
Concealing stolen property	2	1	---	1	---	---	---	1	---	---	---	---
Cutting timber of another	2	---	---	2	---	---	---	---	---	---	---	---
Cutting air brakes	2	2	---	---	---	---	---	1	---	1	---	---
Defacing public building	3	3	---	---	---	---	---	1	---	* 1	---	---
Disturbing religious worship	4	3	---	1	---	---	---	---	---	3	---	---
Emigrant agent	1	---	1	---	---	---	---	---	---	---	---	---
Embezzlement	2	---	---	2	---	---	---	---	---	---	---	---
Enticing away minor	* 1	---	---	---	---	---	---	---	---	---	---	---
False pretense	6	4	---	2	---	---	---	3	---	1	---	---
Gaming	33	31	---	2	---	---	---	6	---	25	---	---
Gaming on Sunday	13	11	---	2	---	---	---	---	---	11	---	---
Larceny, grand	10	4	2	4	---	---	---	4	---	---	---	---
Larceny, petit	19	14	2	3	---	---	---	12	1	1	---	---
Malicious mischief	1	---	---	1	---	---	---	---	---	---	---	---
Manslaughter, first degree	1	---	---	1	---	---	---	---	---	---	---	---
Manslaughter, second degree	1	1	---	---	---	---	---	1	---	---	---	---
Murder, first degree	7	5	1	1	---	---	5	---	---	---	---	---
Public drunkenness	11	11	---	---	---	---	---	3	---	8	---	---

LAW AND EQUITY COURT OF MADISON COUNTY—Continued.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Rape	1	1	---	---	---	---	1	---	---	---	---	---
Resisting officer	5	3	---	2	---	---	---	2	---	1	---	---
Robbery	2	1	---	1	---	---	---	1	---	---	---	---
Selling liquor to minor	8	2	---	6	---	---	---	2	---	---	---	---
Selling cigarettes to minor	6	6	---	---	---	---	---	---	---	6	---	---
Selling mortgaged property	2	1	1	---	---	---	---	---	---	1	---	---
Shooting across public road	9	7	1	1	---	---	---	1	---	6	---	---
Temporary use of animal	1	---	1	---	---	---	---	---	---	---	---	---
Trespass after warning	5	3	2	---	---	---	---	---	1	2	---	---
Trespassing on public prop'y	1	---	---	1	---	---	---	---	---	---	---	---
Unlawfully riding on train	28	25	---	3	---	---	---	9	1	15	---	---
Vagrancy	7	2	1	4	---	---	---	2	---	---	---	---
Violating prohibition law	2	1	---	1	---	---	---	---	---	1	---	---
Violating revenue law	23	12	4	7	---	---	---	2	---	10	---	---
Violating game law	2	1	---	1	---	---	---	---	---	1	---	---
Violating fish law	3	2	1	---	---	---	---	---	---	2	---	---
Violating Sunday law	1	---	1	---	---	---	---	---	---	---	---	---
Violating written contract	10	5	---	5	---	---	---	4	---	1	---	---
Total	331	226	20	85	---	---	12	72	4	140	---	---

Percentage of convictions in cases disposed of, 68.

Predominant crime, Carrying concealed weapons.

* Committed to Alabama Boys' Industrial School.

COUNTY COURT OF MARION COUNTY.

Hon. R. W. Quinn, Solicitor, Hamilton, Alabama.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines Paid or Secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abusive language	8	4	---	4	---	---	---	---	---	4	--	--
Assault and battery	15	8	---	7	---	---	---	---	---	8	--	--
Assault and battery with weapon	3	2	---	1	---	---	---	---	---	2	--	--
Assault, intent to murder	2	---	---	2	---	---	---	---	---	---	--	--
Concealed weapons	15	12	---	3	---	---	---	---	---	12	--	--
Decoying child	1	---	---	1	---	---	---	---	---	---	--	--
Defacing public building	1	---	1	---	---	---	---	---	---	---	--	--
Defamation	4	1	1	2	---	---	---	---	---	1	--	--
Disposing of liquor	3	2	---	1	---	---	---	---	---	2	--	--
False pretense	2	1	---	1	---	---	---	1	---	---	--	--
Larceny, grand	1	---	---	1	---	---	---	---	---	---	--	--
Larceny, petit	4	3	---	1	---	---	---	3	---	---	--	--
Playing cards, public place	3	3	---	---	---	---	---	1	---	2	--	--
Playing cards on Sunday	3	2	---	1	---	---	---	---	---	2	--	--
Playing dice, public place	4	4	---	---	---	---	---	4	---	---	--	--
Practicing medicine without license	6	---	---	6	---	---	---	---	---	---	--	--
Presenting gun	1	---	1	---	---	---	---	---	---	---	--	--
Public drunkenness	29	19	1	9	---	---	---	---	---	19	--	--
Selling mortgaged property	1	1	---	---	---	---	---	---	---	1	--	--
Sending abusive letter	2	2	---	---	---	---	---	---	2	---	--	--
Unlawfully killing fish	3	2	---	1	---	---	---	---	---	2	--	--
Violating prohibition law	4	---	---	4	---	---	---	---	---	---	--	--
Violating revenue law	23	6	---	17	---	---	---	---	---	6	--	--
Total	138	72	4	62	---	---	---	9	2	61	--	--

Percentage of convictions in cases disposed of, 52.

Predominant crime, Public drunkenness.

LAW AND EQUITY COURT OF MORGAN COUNTY.

Hon. S. L. Troup, Solicitor, Decatur, Ala.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abusive language	18	8	1	9	---	---	---	2	---	6	---	---
Adultery and fornication	5	4	---	1	---	---	---	---	---	4	---	---
Arson, third degree	2	---	2	---	---	---	---	---	---	---	---	---
Assault	16	7	3	6	---	---	---	1	---	6	---	---
Assault and battery	4	2	1	1	---	---	---	---	1	2	---	---
Assault and battery with weapon	7	4	1	1	1	---	---	---	---	4	---	---
Burglary	2	---	2	---	---	---	---	---	---	---	---	---
Concealed weapons	10	4	3	2	1	---	---	---	---	4	---	---
Disposing property under lien (mortgaged)	5	5	---	---	---	---	---	1	---	4	---	---
Disturbing religious worship	8	---	6	2	---	---	---	---	---	---	---	---
Gaming	40	19	6	15	---	---	---	---	---	19	---	---
Gaming on Sunday	7	5	---	2	---	---	---	---	---	5	---	---
Giving liquor to minor	1	---	1	---	---	---	---	---	---	---	---	---
Larceny, grand	2	1	---	1	---	---	1	---	---	---	---	---
Larceny, petit	21	14	3	4	---	---	---	4	10	10	---	---
Manslaughter, first degree	2	2	---	---	---	---	2	---	---	---	---	---
Operating slot machine	8	6	2	---	---	---	---	---	---	6	---	---
Presenting gun	2	---	2	---	---	---	---	---	---	---	---	---
Public drunkenness	23	21	---	2	---	---	---	1	---	20	---	---
Selling liquor to minor	1	---	---	1	---	---	---	---	---	---	---	---
Slander	2	---	2	---	---	---	---	---	---	---	---	---
Trespass after warning	17	10	2	4	1	---	---	1	---	9	---	---
Vagrancy	10	---	2	8	---	---	---	---	---	---	---	---
Violating revenue law	12	4	2	6	---	---	---	---	---	4	---	---
Total	225	116	41	65	3	---	2	10	11	103	---	---

Percentage of convictions in cases disposed of, 52.

Predominant crime, Gaming.

CITY COURT OF MOBILE.

Hon. James H. Webb, Solicitor.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abusive language	26	20	3	2	1	---	---	6	5	9	--	--
Affray	2	---	1	1	---	---	---	---	---	---	--	--
Arson, second degree	1	1	---	---	---	---	---	1	---	---	--	--
Assault and battery	40	28	8	3	1	---	---	14	5	9	--	--
Assault and battery with weapon	39	31	4	4	---	---	---	23	3	5	--	--
Assault, intent to murder	43	33	7	3	---	---	27	6	---	---	--	--
Assault, intent to ravish	2	2	---	---	---	---	2	---	---	---	--	--
Assault, intent to rob	3	3	---	---	---	---	3	---	---	---	--	--
Atte'pt at crime against nature	1	1	---	---	---	---	---	1	---	---	--	--
Bigamy	1	1	---	---	---	---	---	1	---	---	--	--
Burglary	44	34	7	3	---	---	16	17	1	---	--	--
Carnal knowl'e, girl over 10	2	2	---	---	---	---	2	---	---	---	--	--
Concealed weapons	25	17	5	3	---	---	---	10	4	3	--	--
Crime against nature	1	---	1	---	---	---	---	---	---	---	--	--
Cruelty to animals	3	---	3	---	---	---	---	---	---	---	--	--
Defamation	1	---	1	---	---	---	---	---	---	---	--	--
Embezzlement	11	8	3	---	---	---	---	6	2	---	--	--
Employing minor to sell liquor	1	1	---	---	---	---	---	---	---	1	--	--
False pretense	10	1	1	8	---	---	---	1	---	---	--	--
Forgery, first degree	1	1	---	---	---	---	1	---	---	---	--	--
Forgery, second degree	14	10	2	2	---	---	10	---	---	---	--	--
Forgery, third degree	13	13	---	---	---	---	---	6	7	---	--	--
Gaming	6	5	---	1	---	---	---	5	---	---	--	--
Hunting on Sunday	1	1	---	---	---	---	---	---	---	1	--	--
Larceny, grand	128	97	19	10	1	---	37	60	---	---	--	--
Larceny, petit	46	44	1	1	---	---	---	20	21	2	--	--

CITY COURT OF MOBILE—Continued.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Malicious mischief	2	1	1	---	---	---	---	---	---	1	---	---
Manslaughter, first degree	14	12	1	1	---	---	10	1	1	---	---	---
Manslaughter, second degree	2	1	---	1	---	---	---	1	---	---	---	---
Murder, first degree	4	3	1	---	---	1	2	---	---	---	---	---
Murder, second degree	6	6	---	---	---	---	6	---	---	---	---	---
Nuisance	1	---	---	1	---	---	---	---	---	---	---	---
Operating slot machine	3	3	---	---	---	---	---	---	---	3	---	---
Perjury	2	1	---	1	---	---	---	1	---	---	---	---
Permitting gaming	2	2	---	---	---	---	---	1	1	---	---	---
Public drunkenness	1	1	---	---	---	---	---	1	---	---	---	---
Rape	4	1	---	---	3	---	1	---	---	---	---	---
Robbery	5	4	1	---	---	---	4	---	---	---	---	---
Seduction	1	---	---	1	---	---	---	---	---	---	---	---
Selling liquor to minor	1	---	1	---	---	---	---	---	---	---	---	---
Severing and taking prop'y from freehold	2	1	1	---	---	---	---	1	---	---	---	---
Threats	1	* 1	---	---	---	---	---	---	---	---	---	---
Trespass after warning	3	1	1	---	1	---	---	---	1	---	---	---
Vagrancy	23	16	2	5	---	---	---	6	6	4	---	---
Violating revenue law	5	4	---	1	---	---	---	1	---	3	---	---
Violating Sunday law	24	17	3	4	---	---	---	---	---	17	---	---
Violating union depot act	1	---	1	---	---	---	---	---	---	---	---	---
Total	573	430	80	56	7	1	121	191	57	57	---	---

Percentage of convictions in cases disposed of, 75.

Predominant crime, Grand larceny.

* Defendant out on bond.

CITY COURT OF MONTGOMERY.

Hon. S. H. Dent, Jr., Solicitor.
Hon. W. T. Seibles, Assistant Solicitor.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abandonment	3	---	1	2	---	---	---	---	---	---	---	---
Abduction	2	---	---	2	---	---	---	---	---	---	---	---
Abortion	3	1	---	---	---	---	1	---	---	---	---	---
Abusive language	2	2	---	2	---	---	---	1	---	1	---	---
Adultery and fornication	1	1	---	---	---	---	---	---	---	1	---	---
Felonious adultery	1	1	---	---	---	---	1	---	---	---	---	---
Affray	2	2	---	---	---	---	---	---	---	2	---	---
Arson, first degree	1	1	---	---	---	---	1	---	---	---	---	---
Assault and battery	91	71	9	8	3	---	---	27	---	44	---	---
Assault, intent to murder	39	19	7	12	1	---	15	4	---	---	---	---
Assault, intent to rob	2	2	---	---	---	---	2	---	---	---	---	---
Attempt to poison	1	---	1	---	---	---	---	---	---	---	---	---
Attempt to escape	1	---	---	1	---	---	---	---	---	---	---	---
Attempt at larceny	1	1	---	---	---	---	---	1	---	---	---	---
Attempt at carnal knowle'e	1	---	1	---	---	---	---	---	---	---	---	---
Bastardy	1	---	---	1	---	---	---	---	---	---	---	---
Bigamy	3	2	1	---	---	---	2	---	---	---	---	---
Burglary	48	39	5	3	1	---	34	5	---	---	---	---
Burglary and grand larceny	3	3	---	---	---	---	2	1	---	---	---	---
Carnal knowl'e, girl over 10	2	1	---	1	---	---	1	---	---	---	---	---
Concealed weapons	63	49	5	6	3	---	---	26	---	23	---	---
Crime against nature	1	---	---	---	1	---	---	---	---	---	---	---
Cruelty to animals	2	1	1	---	---	---	---	---	---	1	---	---
Defaulting road hand	1	---	1	---	---	---	---	---	---	---	---	---
Destroying fence	1	1	---	---	---	---	---	---	---	1	---	---
Disturbing religious worship	1	---	---	1	---	---	---	---	---	---	---	---
Embezzlement	29	12	2	9	6	---	5	1	---	6	---	---
Enticing labor	1	---	---	---	1	---	---	---	---	---	---	---
False pretense	20	8	4	7	1	---	6	1	---	1	---	---
Forgery, second degree	13	8	1	4	---	---	7	1	---	---	---	---
Gaming	18	13	1	4	---	---	---	2	---	11	---	---

CITY COURT OF MONTGOMERY—Continued.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Larceny, grand	179	129	21	18	11	---	107	22	---	---	--	--
Larceny, petit	35	30	1	4	---	---	---	6	---	20	--	--
Manslaughter, first degree	3	3	---	---	---	---	3	---	---	---	--	--
Murder, first degree	17	7	5	4	1	2	5	---	---	---	--	--
Murder, second degree	17	14	3	---	---	---	14	---	---	---	--	--
Night walking	1	1	---	---	---	---	---	1	---	---	--	--
Obstructing public road	1	---	---	1	---	---	---	---	---	---	--	--
Obstructing justice	6	2	---	4	---	---	---	---	---	2	--	--
Perjury	9	1	2	4	2	---	1	---	---	---	--	--
Presenting gun	6	1	3	2	---	---	---	---	---	1	--	--
Rape	5	3	2	---	---	---	3	---	---	---	--	--
Receiving stolen property	8	3	1	2	2	---	---	1	---	2	--	--
Resisting officer	5	4	---	1	---	---	---	1	---	3	--	--
Robbery	13	12	1	---	---	---	11	---	---	---	--	--
Selling liquor to minor	4	---	---	4	---	---	---	---	---	---	--	--
Selling choking mule	1	---	---	1	---	---	---	---	---	---	--	--
Selling mortgaged property	4	---	2	1	1	---	---	---	---	---	--	--
Selling examination papers	3	2	---	1	---	---	---	---	---	2	--	--
Shooting across public road	30	22	3	5	---	---	---	2	---	20	--	--
Temporary use of animal	1	1	---	---	---	---	---	1	---	---	--	--
Trespass after warning	2	1	---	1	---	---	---	---	---	1	--	--
Unlawfully riding on train	8	5	1	1	1	---	---	1	---	4	--	--
Unlawfully changing name	4	3	1	---	---	---	---	3	---	---	--	--
Vagrancy	15	8	3	4	---	---	---	5	---	3	--	--
Violating prohibition law	56	30	3	22	1	---	---	6	---	24	--	--
Violating 9 o'clock law	4	1	---	3	---	---	---	---	---	1	--	--
Violating revenue law	12	9	1	2	---	---	---	2	---	7	--	--
Violating game law	3	3	---	---	---	---	---	2	---	1	--	--
Violating Sunday law	2	1	---	1	---	---	---	---	---	1	--	--
Violating written contract	30	25	1	4	---	---	---	9	---	16	--	--
Total	844	560	95	153	36	2	222	132	---	199	--	--

Percentage of convictions in cases disposed of, 66.

Predominant crime, Grand larceny.

COUNTY COURT OF MONTGOMERY.

Hon. S. H. Dent, Jr., Solicitor, Montgomery, Ala.
Hon. W. T. Seibels, Assistant Solicitor, Montgomery, Ala.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abusive language	3	3	---	---	---	---	---	---	---	3	--	--
Assault and battery with weapon	1	1	---	---	---	---	---	---	---	1	--	--
Defaulting road hand	1	1	---	---	---	---	---	---	---	1	--	--
Total	5	5	---	---	---	---	---	---	---	5	--	--

Percentage of convictions in cases disposed of, 100.
Predominant crime, Abusive language.

LAW COURT OF PIKE COUNTY.

Hon. E. R. Brannen, Solicitor, Troy, Ala.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abusive language	15	8	1	6	---	---	---	1	1	6	---	---
Adultery and fornication	8	5	3	---	---	---	---	1	---	4	---	---
Assault and battery	27	17	5	5	---	---	---	---	---	17	---	---
Breaking fence	2	2	---	---	---	---	---	---	---	2	---	---
Concealed weapons	52	39	8	4	1	---	---	12	2	25	---	---
Defamation	1	1	---	---	---	---	---	1	---	---	---	---
Disturbing religious worship	3	2	1	---	---	---	---	1	---	1	---	---
Embezzlement	3	2	---	1	---	---	---	---	---	2	---	---
Enticing away minor	2	1	1	---	---	---	---	---	---	1	---	---
False pretense	11	4	5	2	---	---	---	1	---	3	---	---
Gaming	2	---	1	1	---	---	---	---	---	---	---	---
Gaming public place	7	---	1	6	---	---	---	---	---	---	---	---
Gaming on Sunday	29	22	---	7	---	---	---	1	---	21	---	---
Larceny, petit	9	7	2	---	---	---	---	3	---	4	---	---
Obstructing public road	2	---	1	1	---	---	---	---	---	---	---	---
Peddling without license	1	1	---	---	---	---	---	---	---	1	---	---
Practicing dentistry without license	1	1	---	---	---	---	---	---	---	1	---	---
Presenting gun	1	1	---	---	---	---	---	---	---	1	---	---
Public drunkenness	5	5	---	---	---	---	---	---	---	5	---	---
Selling mortgaged property	5	3	1	1	---	---	---	---	---	3	---	---
Trespass after warning	1	---	1	---	---	---	---	---	---	---	---	---
Unlawfully riding on train	2	2	---	---	---	---	---	2	---	---	---	---
Vagrancy	2	1	---	1	---	---	---	---	---	1	---	---
Violating revenue law	7	4	2	1	---	---	---	---	---	4	---	---
Violating written contract	1	1	---	---	---	---	---	---	---	1	---	---
Total	199	129	29	36	5	---	---	23	3	103	---	---

Percentage of convictions in cases disposed of, 65.

Predominant crime, Concealed weapons.

CITY COURT OF SELMA.

Hon. R. H. Mangum, Solicitor, Selma, Ala.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abusive language	1	---	---	1	---	---	---	---	---	---	---	---
Assault and battery	1	1	---	---	---	---	---	---	1	---	---	---
Assault and battery with weapon	15	11	2	1	1	---	---	6	---	5	---	---
Assault, intent to murder	7	4	1	2	---	---	1	3	---	---	---	---
Attempt to commit a felony	1	1	---	---	---	---	---	1	---	---	---	---
Burglary	12	7	2	3	---	---	1	6	---	---	---	---
Concealed weapons	21	18	---	2	1	---	---	9	---	9	---	---
Disturbing females	1	1	---	---	---	---	---	1	---	---	---	---
Disturbing females on railroad train	1	1	---	---	---	---	---	---	---	1	---	---
False pretense	3	---	---	2	1	---	---	---	---	---	---	---
Forgery, third degree	2	2	---	---	---	---	---	2	---	---	---	---
Gaming	1	---	1	---	---	---	---	---	---	---	---	---
Injury to building	1	1	---	---	---	---	---	---	---	1	---	---
Larceny, grand	16	7	4	5	---	---	2	5	---	---	---	---
Larceny, petit	10	7	1	2	---	---	---	5	---	2	---	---
Malicious mischief	1	---	---	1	---	---	---	---	---	---	---	---
Manslaughter, first degree	2	2	---	---	---	---	2	---	---	---	---	---
Murder, first degree	6	4	2	---	---	---	4	---	---	---	---	---
Perjury	2	---	2	---	---	---	---	---	---	---	---	---
Presenting gun	1	---	---	1	---	---	---	---	---	---	---	---
Resisting officer	1	1	---	---	---	---	---	1	---	---	---	---
Shooting across public road	1	1	---	---	---	---	---	---	---	1	---	---
Temporary use of animal	1	1	---	---	---	---	---	1	---	---	---	---
Violating prohibition law	9	8	---	---	1	---	---	1	---	7	---	---
Total	117	78	15	20	4	---	10	41	1	26	---	---

Percentage of convictions in cases disposed of, 67.

Predominant crime, Concealed weapons.

COUNTY COURT OF SUMTER COUNTY.

Hon. J. A. Mitchell, Solicitor, Livingston, Ala.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abandonment	1	---	1	---	---	---	---	---	---	---	--	--
Abusive language	7	5	---	2	---	---	---	---	---	5	--	--
Adultery and fornication	1	---	---	1	---	---	---	---	---	---	--	--
Arson, third degree	1	---	1	---	---	---	---	---	---	---	--	--
Assault and battery	12	9	1	2	---	---	---	---	---	9	--	--
Assault and battery with weapon	38	30	5	3	---	---	---	4	---	26	--	--
Attempt at larceny	1	---	---	1	---	---	---	---	---	---	--	--
Concealed weapons	29	28	---	1	---	---	---	14	---	14	--	--
Cruelty to animals	3	1	2	---	---	---	---	---	---	1	--	--
Disturbing religious worship	1	1	---	---	---	---	---	---	---	1	--	--
False pretense	6	4	---	2	---	---	---	2	---	2	--	--
Gaming	25	23	---	2	---	---	---	---	---	23	--	--
Larceny, petit	26	18	4	4	---	---	---	3	---	15	--	--
Malicious mischief	1	---	---	1	---	---	---	---	---	---	--	--
Manslaughter, second degree	1	1	---	---	---	---	---	---	---	1	--	--
Presenting gun	4	4	---	---	---	---	---	1	---	3	--	--
Public drunkenness	4	4	---	---	---	---	---	---	---	4	--	--
Shooting across public road	3	2	1	---	---	---	---	---	---	2	--	--
Temporary use of animal	3	3	---	---	---	---	---	2	---	1	--	--
Trespass after warning	3	3	---	---	---	---	---	---	---	3	--	--
Violating game law	2	1	---	1	---	---	---	---	---	1	--	--
Violating prohibition law	38	31	1	3	3	---	---	10	---	21	--	--
Violating Sunday law	1	1	---	---	---	---	---	---	---	1	--	--
Violating written contract	3	3	---	---	---	---	---	3	---	---	--	--
Total	214	172	16	23	3	---	---	39	---	133	--	--

Percentage of convictions in cases disposed of, 80.

Predominant crime, Assault and battery with weapon; Violating prohibition law.

CITY COURT OF TALLADEGA.

Hon. Marion H. Sims, Solicitor, Talladega.
(Succeeded Hon. Alexander M. Garber, January, 1907.)

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abandonment	3	2	---	1	---	---	---	---	---	2	---	---
Abusive language	44	32	3	9	---	---	---	3	---	29	---	---
Adultery and fornication	1	1	---	---	---	---	---	---	---	1	---	---
Aiding prisoner to escape	4	3	---	1	---	---	3	---	---	---	---	---
Assault and battery	14	11	2	1	---	---	---	1	---	10	---	---
Assault and battery with weapon	100	74	6	19	1	---	---	12	---	62	---	---
Assault, intent to murder	13	8	1	4	---	---	7	1	---	---	---	---
Assault, intent to ravish	2	1	---	1	---	---	1	---	---	---	---	---
Bigamy	1	1	---	---	---	---	1	---	---	---	---	---
Carnal know'e, girl under 10	1	1	---	---	---	---	1	---	---	---	---	---
Concealed weapons	62	46	3	13	---	---	---	10	---	36	---	---
Crime against nature	1	---	---	---	1	---	---	---	---	---	---	---
Defamation	2	---	1	1	---	---	---	---	---	---	---	---
Discharging firearm on railroad train	2	2	---	---	---	---	---	---	---	2	---	---
Disposing prop'ty under lien	3	1	1	1	---	---	---	---	---	1	---	---
Disturbing females on railroad train	4	3	---	1	---	---	---	---	---	3	---	---
Disturbing religious worship	17	13	1	3	---	---	---	---	---	13	---	---
False pretense	1	1	---	---	---	---	---	---	---	1	---	---
Gaming	25	23	---	1	1	---	---	---	---	23	---	---
Larceny, grand	29	22	2	5	---	---	21	1	---	---	---	---
Larceny, petit	34	30	1	3	---	---	---	12	11	7	---	---
Mayhem	1	---	1	---	---	---	---	---	---	---	---	---
Manslaughter, first degree	4	1	3	---	---	---	1	---	---	---	---	---
Manslaughter, second degree	4	4	---	---	---	---	---	1	2	1	---	---

CITY COURT OF TALLADEGA—Continued.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Miscegenation	1	1	---	---	---	---	1	---	---	---	---	---
Murder, first degree	10	5	5	---	---	---	5	---	---	---	---	---
Murder, second degree	3	3	---	---	---	---	3	---	---	---	---	---
Obtaining money under false pretense	4	3	1	---	---	---	---	1	2	---	---	---
Obstructing railroad	1	1	---	---	---	---	1	---	---	---	---	---
Public drunkenness	23	15	---	8	---	---	---	---	---	15	---	---
Rape	1	---	---	1	---	---	---	---	---	---	---	---
Robbery	1	1	---	---	---	---	1	---	---	---	---	---
Seduction	1	---	---	1	---	---	---	---	---	---	---	---
Selling diseased meat	1	1	---	---	---	---	---	---	---	1	---	---
Selling mortgaged property	1	1	---	---	---	---	---	---	1	---	---	---
Shooting across public road	13	8	---	4	1	---	---	---	---	8	---	---
Trespass after warning	11	10	---	1	---	---	---	3	---	7	---	---
Unlawfully riling on train	3	2	---	1	---	---	---	---	---	2	---	---
Vagrancy	3	2	---	1	---	---	---	2	---	---	---	---
Viola'g contract with surety, confessed judgment	2	1	1	---	---	---	---	---	---	1	---	---
Violating game law	7	6	---	1	---	---	---	---	---	6	---	---
Violating revenue law	7	7	---	---	---	---	---	4	---	3	---	---
Violating Sunday law	14	10	---	4	---	---	---	---	---	10	---	---
Total	479	357	32	86	4	---	46	51	16	244	---	---

Percentage of convictions in cases disposed of, 73.

Predominant crime, Assault and battery with weapon.

COUNTY COURT OF TUSCALOOSA COUNTY.

Hon. C. B. Verner, Solicitor, Tuscaloosa, Ala.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	No. sentences to: Abated or withdrawn	Death	Penitentiary	Hard Labor	Jail	Fines paid or secured	Insane Asylum	Pardoned
Abusive language	16	14	2	---	---	---	---	---	---	14	---	---
Adultery and fornication	28	15	5	7	---	---	---	1	---	14	---	---
Assault and battery	84	71	7	16	---	---	---	12	---	59	---	---
Assault, intent to murder	9	6	2	1	---	---	6	---	---	---	---	---
Assault, intent to ravish	3	3	---	---	---	---	3	---	---	---	---	---
Attempt at larceny	5	4	1	---	---	---	---	2	---	2	---	---
Bigamy	1	---	---	1	---	---	---	---	---	---	---	---
Burglary	8	6	---	2	---	---	---	6	---	---	---	---
Concealed weapons	58	49	3	6	---	---	---	13	---	36	---	---
Cruelty to animals	4	3	---	1	---	---	---	3	---	---	---	---
Defaulting road hand	1	---	---	1	---	---	---	---	---	---	---	---
Disposing prop'ty under lien (mortgage)	2	2	---	---	---	---	---	---	---	2	---	---
Disturbing females in car	1	1	---	---	---	---	---	1	---	---	---	---
Disturbing religious worship	3	2	1	---	---	---	---	---	---	2	---	---
Embezzlement	3	2	---	1	---	---	---	---	2	2	---	---
Escape	3	3	---	---	---	---	---	2	---	1	---	---
False pretense	14	10	---	4	---	---	---	2	6	8	---	---
Forgery, first degree	8	5	---	3	---	---	5	---	---	---	---	---
Gaming	99	79	6	14	---	---	---	6	---	73	---	---
Larceny, grand	8	5	1	1	1	---	4	1	---	---	---	---
Larceny, petit	19	8	---	1	---	---	---	5	13	13	---	---
Malicious mischief	13	8	2	3	---	---	---	1	---	7	---	---
Manslaughter, first degree	2	2	---	---	---	---	2	---	---	---	---	---
Manslaughter, second degree	5	5	---	---	---	---	1	3	1	3	---	---
Murder, first degree	2	2	---	---	---	---	2	---	---	---	---	---
Murder, second degree	5	5	---	---	---	---	5	---	---	---	---	---
Peddling without license	2	1	1	---	---	---	---	---	---	1	---	---

COUNTY COURT OF TUSCALOOSA COUNTY—Continued.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Perjury	3	---	1	2	---	---	---	---	---	---	---	---
Permit'g minor to play pool	5	3	---	2	---	---	---	---	---	3	---	---
Presenting gun	6	4	2	---	---	---	---	1	---	3	---	---
Public drunkenness	13	12	---	1	---	---	---	---	---	12	---	---
Resisting officer	5	5	---	---	---	---	---	4	---	1	---	---
Rioting	4	4	---	---	---	---	---	3	---	1	---	---
Seduction	2	1	---	1	---	---	1	---	---	---	---	---
Trespass after warning	2	---	2	---	---	---	---	---	---	---	---	---
Unlawful injury to animal	1	1	---	---	---	---	---	---	---	1	---	---
Vagrancy	26	21	1	4	---	---	---	7	---	14	---	---
Violating prohibition law	77	58	5	14	---	---	---	10	---	38	---	---
Violating Sunday law	3	3	---	---	---	---	---	---	---	3	---	---
Violating written contract	2	2	---	---	---	---	---	1	---	1	---	---
Total	555	434	42	86	1	---	28	84	22	314	---	---

Percentage of convictions in cases disposed of, 78 per cent.
Predominant crime, Gaming.

LAW AND EQUITY COURT OF WALKER COUNTY.

Hon. Sheriff Lacy, Solicitor, Jasper, Ala.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abusive language	129	78	12	36	3	---	---	7	---	73	---	---
Adultery and fornication	27	5	4	16	2	---	---	4	---	2	---	---
Allowing minor to play on pool table	1	1	---	---	---	---	---	---	---	1	---	---
Assault and battery	114	75	16	22	1	---	---	3	---	70	---	---
Assault and battery with weapon	31	22	3	6	1	---	---	4	---	18	---	---
Assault, intent to murder	5	3	---	2	---	---	3	---	---	---	---	---
Betting at cards	13	7	---	5	1	---	---	---	---	7	---	---
Bigamy	1	---	---	---	1	---	---	---	---	---	---	---
Burglary	3	2	---	1	---	---	1	1	---	---	---	---
Changing name unlawfully	2	1	1	---	---	---	---	---	---	1	---	---
Concealed weapons	74	45	9	18	---	---	---	12	---	32	---	---
Cruelty to animals	1	1	---	---	---	---	---	---	---	1	---	---
Decoying away child	1	---	---	1	---	---	---	---	---	---	---	---
Defamation	7	4	1	2	---	---	---	---	---	4	---	---
Defaulting road hand	26	10	6	10	---	---	---	---	---	10	---	---
Disturbing females on train	4	3	---	1	---	---	---	---	---	3	---	---
Disturbing religious worship	21	8	9	4	---	---	---	---	---	8	---	---
Embezzlement	2	---	1	1	---	---	---	---	---	---	---	---
False pretense	11	8	---	3	---	---	---	1	---	7	---	---
Forgery, second degree	1	1	---	---	---	---	---	---	---	1	---	---
Forgery, third degree	3	1	---	1	1	---	---	---	---	1	---	---
Gaming	59	37	5	16	1	---	---	13	---	25	---	---
Giving liquor to minor	4	2	1	1	---	---	---	---	---	2	---	---
Illegal voting	1	---	---	1	---	---	---	---	---	---	---	---
Keeping sheep killing dog	2	1	---	1	---	---	---	---	---	1	---	---
Keeping gaming table	1	---	---	1	---	---	---	---	---	---	---	---
Keeping house of prostitut'n	1	---	---	1	---	---	---	---	---	---	---	---
Larceny ,grand	18	13	1	4	---	---	2	3	---	10	---	---

LAW AND EQUITY COURT OF WALKER COUNTY—Continued.

CHARACTER OF OFFENSE	No. of cases disposed of	Convictions	Acquittals	Nolle Prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Larceny, petit	21	12	4	5	---	---	---	6	5	5	---	---
Keeping chicken eating dog	1	1	---	---	---	---	---	---	---	1	---	---
Manslaughter, first degree	5	3	2	---	---	---	3	---	---	---	---	---
Murder, first degree	11	5	6	---	---	1	4	---	1	---	---	---
Peddling without license	2	2	---	---	---	---	---	---	---	2	---	---
Playing cards, public place	3	3	---	---	---	---	---	---	---	3	---	---
Presenting gun	3	1	---	2	---	---	---	---	1	---	---	---
Public drunkenness	49	37	1	11	---	---	---	5	---	33	---	---
Receiving stolen property	2	---	---	2	---	---	---	---	---	---	---	---
Resisting officer	3	1	---	2	---	---	---	---	---	1	---	---
Robbery	1	---	---	1	---	---	---	---	---	---	---	---
Seduction	1	---	---	---	1	---	---	---	---	---	---	---
Selling liquor to minor	3	---	---	3	---	---	---	---	---	---	---	---
Selling mortgaged property	4	4	---	---	---	---	---	---	---	4	---	---
Sending insulting mail	1	---	1	---	---	---	---	---	---	---	---	---
Shooting across public road	5	4	1	---	---	---	---	1	---	3	---	---
Tel'g fortune without license	1	---	---	1	---	---	---	---	---	---	---	---
Throwing into train	2	---	---	2	---	---	---	---	---	---	---	---
Trespass after warning	12	5	1	6	---	---	---	---	---	5	---	---
Unlawful injury to animal	13	6	4	2	1	---	---	---	---	6	---	---
Vagrancy	22	8	5	7	2	---	---	3	---	6	---	---
Violat'g contract with surety confessed judgment	1	---	---	1	---	---	---	---	---	---	---	---
Violating game law	20	7	---	13	---	---	---	---	---	7	---	---
Violating prohibition law	58	23	11	24	---	---	---	4	---	19	---	---
Violating election law	1	---	1	---	---	---	---	---	---	---	---	---
Violating revenue law	1	1	---	---	---	---	---	---	---	1	---	---
Violating Sunday law	32	30	---	2	---	---	---	1	---	29	---	---
Violating written contract	2	1	---	1	---	---	---	---	---	1	---	---
Total	850	488	106	241	15	1	16	70	2	410	---	---

Percentage of convictions in cases disposed of, 57.

Predominant crime, Abusive language.

CITY COURT OF BESSEMER.

Hon. L. D. Godfrey, Solicitor until January 1, 1908.
when, upon his resignation, Hon. Ben G. Perry was appointed.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abandonment	1	---	---	1	---	---	---	---	---	---	---	---
Abusive language	99	51	31	12	5	---	---	---	---	51	---	---
Adultery and fornication	3	---	1	2	---	---	---	---	---	---	---	---
Assault and battery	51	30	14	6	1	---	---	1	---	29	---	---
Assault and battery with weapon	115	64	36	9	5	---	---	8	---	56	---	---
Assault, intent to murder	3	1	1	1	---	---	---	1	---	---	---	---
Assault, intent to ravish	2	1	---	1	---	---	---	1	---	---	---	---
Bastardy	3	2	---	1	---	---	---	---	---	2	---	---
Bigamy	3	---	3	---	---	---	---	---	---	---	---	---
Carnal knowl'e girl over 10	1	1	---	---	---	---	---	---	---	1	---	---
Concealed weapons	24	12	4	6	2	---	---	2	---	10	---	---
Cruelty to animals	5	1	4	---	---	---	---	---	---	1	---	---
Defamation	6	1	4	1	---	---	---	---	---	1	---	---
Disposing prope'y under lien	1	---	1	---	---	---	---	---	---	---	---	---
Disorderly conduct	1	---	1	---	---	---	---	---	---	---	---	---
Embezzlement	4	---	3	1	---	---	---	---	---	---	---	---
False pretense	6	5	---	---	1	---	---	---	---	5	---	---
Fish'g in private pond without consent	1	---	---	1	---	---	---	---	---	---	---	---
Forgery, second degree	2	1	---	1	---	---	---	1	---	---	---	---
Gaming	13	5	6	1	1	---	---	---	---	5	---	---
Incest	1	---	---	1	---	---	---	---	---	---	---	---
Larceny, grand	3	---	2	---	1	---	---	---	---	---	---	---
Larceny from person	1	---	1	---	---	---	---	---	---	---	---	---
Larceny, petit	15	1	5	9	---	---	---	---	---	1	---	---
Manslaughter, first degree	2	---	*1	1	---	---	---	---	---	---	---	---
Manslaughter, second degree	1	1	---	---	---	---	---	1	---	---	---	---

CITY COURT OF BESSEMER—Continued.

CHARACTER OF OFFENSE	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Murder, first degree	6	1	3	2	---	1	---	---	---	---	---	---
Obtain'g money under false pretense	2	1	1	---	---	---	1	---	---	---	---	---
Permit'g hog to run at large	1	---	1	---	---	---	---	---	---	---	---	---
Perjury	2	---	2	---	---	---	---	---	---	---	---	---
Poisoning stream	1	---	1	---	---	---	---	---	---	---	---	---
Presenting gun	8	---	7	1	---	---	---	---	---	---	---	---
Public drunkenness	2	---	2	---	---	---	---	---	---	---	---	---
Receiving stolen property	8	1	7	---	---	---	---	1	---	---	---	---
Recklessly driving auto	1	---	---	1	---	---	---	---	---	---	---	---
Resisting officer	1	---	---	1	---	---	---	---	---	---	---	---
Robbery	1	---	1	---	---	---	---	---	---	---	---	---
Selling liquor to minor	1	---	---	1	---	---	---	---	---	---	---	---
Selling mortgaged property	1	1	---	---	---	---	---	---	---	1	---	---
Sending abusive letter	1	1	---	---	---	---	---	---	---	1	---	---
Shooting across public road	4	3	1	---	---	---	---	---	---	3	---	---
Selling diseased meat	1	1	---	---	---	---	---	---	---	1	---	---
Trespass after warning	19	7	10	2	---	---	---	---	---	3	---	---
Unlawful assembly	1	---	1	---	---	---	---	---	---	---	---	---
Unlawfully killing hog	4	---	3	1	---	---	---	---	---	---	---	---
Vagrancy	19	4	5	8	2	---	---	2	---	2	---	---
Violating prohibition law	42	16	18	8	---	---	---	1	---	15	---	---
Violating revenue law	20	8	4	5	3	---	---	1	---	7	---	---
Violating Sunday law	9	5	4	---	---	---	---	---	---	5	---	---
Total	522	226	186	99	11	1	1	20	---	200	---	---

Percentage of convictions in cases disposed of, 43.

Predominant crime, Assault and battery with weapon.

IV

Opinions of The Attorney General

RENDERED DURING THE BIENNIAL PERIOD, WHICH HE DEEMS OF GENERAL PUBLIC INTEREST.

IV.

OPINIONS OF THE ATTORNEY GENERAL.

Refund of Taxes Paid on Solvent Credits.

February 4th, 1907.

Hon. William W. Brandon,
State Auditor,
Capitol.

Dear Sir:—

I have your favor of the 21st ult., enclosing an opinion rendered by my predecessor, Hon. Massey Wilson, Sept. 24th, 1906,* with reference to money paid for taxes on solvent credits, and requesting my opinion as to whether or not your department should refund such money which has been paid into the State Treasury, and if so, upon whose certificate should same be refunded; and what should the certificate contain. You also enclose a form prepared by your office under the Refunding Act, which will be hereafter referred to.

In the case of Barnes v. Moragne, 41 So. 947, Judge Tyson, who rendered the opinion of the Court, considers that provision of the General Revenue Law of 1903 (General Acts 1903, page 227) imposing a privilege tax on recorded mortgages and holds that said provision operates to repeal subdivision 7 of Section 3911 of the Code of 1896, imposing an ad valorem tax on solvent credits. I quote the following from this opinion: "So, then, in order to avoid declaring the whole provission of the act unconstitutional, which we must not do if it is possible, we are forced to hold that the Legislature intended the provision as a substitute for Subsection 7, and, therefore, intended to exempt all the property enumerated in it from a property tax. Nor can it be held that subdivision 14 of section 3911 fills the chasm. It is undoubtedly true that that subsection was added to prevent an escape to property which should be taxed, and which was not enumerated in the 13 preceding subdivisions. But if the particular class, if properly enumerated in subsection 7, was and is exempt from an ad valorem tax by

the provision of the act amending it, which we have been constrained to hold that it does, it is clear that it is not made subject to that tax by subsection 14."

The General Revenue Act containing the provision imposing a privilege tax on recorded mortgages was approved March 4th, 1903, and was not made retroactive and, therefore, it did not relieve solvent credits from taxation for the tax year beginning October 1st, 1902, and ending Sept. 30th, 1903; but it does exempt solvent credits from taxation from and after the tax year beginning Oct. 1st, 1903.

Hooper v. State, 141 Ala. 111, 118.

The Act approved Sept. 29th, 1903 (General Acts 1903, page 278) makes provision for refunding to any person owning property subject to taxation in this State, money which has been erroneously paid for taxes.

Section 1 of said Act provides "That any person or the heir or personal representative of such person who owns property subject to taxation in this State, and who through a mistake or error in the assessment or collection of taxes has paid to the County Tax Collector money that was not due him for taxes, may file a petition in the Court of County Commissioners asking that a warrant be drawn in his favor refunding to him such part of said money as was received by the County, and that a certificate of the Judge of Probate be sent the State Auditor showing the amount of said money received by the State."

Section 2 of said Act makes it the duty of the County Commissioners to examine into the facts and evidence offered by the petitioner, and if the proper and full proofs be made, the Court must allow the claim as to the County Tax and must instruct the Judge of Probate to certify to the State Auditor the fact that the petition has been filed and full and proper proof has been made of the facts therein alleged and send the State Auditor a copy of the said proof and that the petitioner through a mistake or error in the assessment or collection of taxes has paid to the County Tax Collector a certain sum of money of which amount the State has received_____ dollars, which should be refunded in accordance with the prayer of the petitioner.

Section 3 provides that on receipt of said certificate and proofs, the Auditor, if he finds same sufficient, is authorized to draw his warrant on the State Treasury for such an amount as the certificates show should be refunded.

I agree with the opinion expressed by Mr. Wilson that taxes on solvent credits beginning with the tax year Oct. 1st, 1903, and ending Sept. 30th, 1904, should be refunded under the provisions of the Act last above referred to. The provisions of the Act are clear and explicit and when a proper petition is presented to the Court of County Commissioners and the same is duly approved there is no discretion in that Court as to the allowance of the claim as to the County taxes, and the Court must instruct the Judge of Probate to certify to the Auditor the fact that the petition has been filed and forward therewith a copy of the proofs, and when this certificate and proof is presented to you, it is your duty, if the same complies with said act, to draw your warrant for the amount shown by the certificate.

I am returning herewith a form of petition and proof and certificate of Judge of Probate prepared under the Act with the view of obtaining a refund of taxes paid on solvent credits. This form complies with the provisions of the Refunding Act. When this petition, certificate and proofs, duly made out, are presented to you, it will be your duty to draw your warrant on the State Treasurer for such amount as the certificate shows should be refunded.

Very respectfully,
ALEX. M. GARBER,
Attorney General.

The following is a copy of the opinion of Attorney General Wilson on this subject:

***Refunding Money Paid For Taxes on Solvent Credits.**

September 24th, 1906.

Hon. J. M. Carmichael,
State Auditor,
Capitol.

Dear Sir:—

Answering your favor of the 19th, I beg to say:

In a recent decision the Supreme Court held that sub-section 7 of Section 3911 of the Code taxing solvent credits, was repealed by the Statute levying a privilege tax for recording mortgages (General Acts 1903, p. 227), and that solvent credits are not now taxable. Barnes v. Maragne, MS. The Statute referred to was approved March 4, 1903. The Statute is not made retroactive. It does not, therefore, relieve solvent credits from taxation for the tax year beginning October 1, 1902, and ending September 30, 1903; but it does exempt solvent credits from taxation from and after the tax year beginning October 1, 1903, and ending September 30, 1904. Hooper v. State, 141 Alabama 111, 118.

The Act approved September 29, 1903, (General Acts 1903, p. 278) makes provision for refunding to any person owning property subject to taxation in this State money which has been erroneously paid for taxes. Under the provisions of the Act mentioned, a person owning property subject to taxation in this State, who has paid taxes on solvent credits for the tax years 1903-04 or 1904-05 may have the same refunded to him upon complying with the provisions of the Statute referred to.

Very respectfully,
(Signed) MASSEY WILSON,
Attorney General.

School Money Due Teacher—Not Subject to Garnishment.

February 7th, 1907.

Hon. Harry C. Gunnels,
Supt. of Education,
Capitol.

Dear Sir:—

In reply to your favor of the 7th inst., I have to say that public school money in the hands of the County Superintendent, for disbursement to teachers, is not subject to garnishment at the suit of a creditor of a teacher to whom such money is due or to become due.

Pruitt vs. Armstrong, 56 Ala. 306.

Respectfully yours,
ALEX. M. GARBER,
Attorney General.

Hon. William L. Martin, Attorney General, on June 11, 1891, advised Hon. John G. Harris, then Superintendent of Education, to the same effect.

Payment of Interest on Public Debt.

February 18th, 1907.

Hon. B. B. Comer,
Governor of Alabama,
Capitol.

My Dear Sir:—

In reply to your request to advise you regarding the deficit in the interest account of the bonded indebtedness of the State of Alabama due January 1st, 1907, which is shown to be $28,825.00 by the file of papers from the office of Hon. Walter D. Seed, State Treasurer, herewith enclosed, and to suggest the proper manner of liquidating the same, I desire to call your attention first to Section 2020 of the Code of 1896. Under this Section the State Treasurer on to-wit, November 19th,

1908, certified to the Governor that he would need $178,825.00 to pay the interest on the bonded indebtedness of the State falling due on the 1st day of January, 1907.

The General Appropriation Act, approved February 13th, 1903, page 50 of the Acts of 1903, subdivision 39 of Section 1 of said Act, appropriated $450,000.00 a year for interest on the bonded debt of the State. Section 2 of said Act renewed and continued this appropriation for the year ending September 30th, 1906, in force until the first day of February, 1907, but provided that no more than one third of the said sum appropriated for the year ending September 3rd, 1906, should be expended in the period for which it was thus renewed and extended. Under the influence of this provision the State Auditor at that time, on December 1st, 1906, only issued his warrant in favor of the State Treasurer for $150,000.00, one third of the $450,000.00, appropriated for the entire preceding fiscal year. This leaves a balance of $28,825.00 still due on this account. The General Appropriation Bill, approved by your Excellency on February 8th, 1907, subdivision 35 of Section 1, appropriates $360,000.00 for each year for interest on bonded debt of the State.

I am enclosing also a copy of the Governor's letter to the State Auditor on November 19th, 1906, with all indorsements thereon for your information.

With the above data before you, I advise that you give instructions to the State Auditor directing him to draw his warrant on the Treasury in favor of the State Treasurer, for the said amount of $28,825.00 to pay the balance of the interest on the bonded debt of the State due January 1st, 1907.

I remain,

Very respectfully,
ALEX. M. GARBER,
Attorney General.

Poll Tax—Liability For.

February 16th, 1907.

Hon. William W. Brandon,
State Auditor,
Capitol.

Dear Sir:—

Replying to your letter of February 11th, enclosing the correspondence between you and Captain D. Z. Goodlett, Tax Collector of Calhoun County, and requesting my opinion as to whether or not a person who becomes of age on the 31st day of March, 1902, is liable for Poll Tax under our law for that year (1902), I beg to submit the following:

Section 194, page 105 of the Constitution of 1901 reads as follows: "The poll tax mentioned in this article shall be one dollar and fifty cents upon each male inhabitant of the State, over the age of 21 years, and under the age of 45 years who would not now be exempt by law. * * * Such poll tax shall become due and payable on the 1st day of October in each year, and become delinquent on the 1st day of the next succeeding February." The General Election Law, Acts 1903, page 479, Section 104, follows the language of Section 194 of the Constitution. Both the Constitution and the General Election Law provide that no legal process nor fee shall be allowed for the collection of the poll tax and that the Tax Collector shall make returns of poll tax collections separate from other collections. Hence, it is clearly shown that poll taxes are not assessable as other taxes.

Section 1 of the General Election Law, Acts of 1903, page 438, provides that every male citizen of this State who is a citizen of the United States 21 years old or upwards, not laboring under any disabilities as to voting who shall have resided in this State at least two years, in the County one year and in the precinct three months, immediately preceding the election at which he offers to vote and who shall have been duly registered as an elector and shall have paid on or before the 1st day of February next, preceding the date of the election at which he offers to vote, all poll taxes due from him for the year 1901, and for each subsequent year, shall be an elector, and shall be entitled to vote at any election by the people.

Sections 46 and 47, page 456 of this Act of 1903, also provide that on February 1st of each year the several Tax Collectors shall furnish the Judge of Probate a list of all persons who have paid poll tax since February 1st of the preceding year, and said statement shall show for what year each poll tax was paid, and the Judge of Probate shall deliver to the inspector at each voting place a list of all persons in such precinct who have paid all poll taxes due prior to February 1st preceding the election.

It will be seen from the above that there are at least two distinct conditions imposed upon a man 21 years old or upwards and not over 45 years old before he shall be entitled to vote, viz: 1st. He shall have been duly registered as an elector; 2nd. He shall have paid on or before the 1st day of February next preceding the date of the election at which he offers to vote all poll taxes due from him for the year 1901, and *for each subsequent year.* Both the Constitution and the General Election Law of 1903 provide that such poll tax *shall become due and payable on the 1st day of October in each year* and shall become *delinquent on the first* day of the next succeeding February.

It is my opinion, therefore, that a man who becomes 21 years old on the 31st day of March, 1902, or upon any date prior to October the 1st, 1902, is subject to the poll tax which, under the law, is due and payable on the 1st day of October, 1902. In other words, a man reaching the age of 21 years old at any time after the 1st day of October of one year and before the 1st day of October of the next year is due and subject to a poll tax for such next succeeding year. To construe the law otherwise it would be necessary to hold that a man must be subject to a poll tax on the first day of October, say for instance, on the 1st day of October, 1901, before such poll tax shall become due and payable from him on the 1st day of October, 1902, which contentions seems to me to be a paradox, in view of the fact that there is nothing in the law quoted above which intimates, or from which it can be inferred, that a person must be 21 years old 12 months before he is subject to a poll tax.

The present voluntary and non-compulsory nature of the poll tax constitutes the radical change under the New Constitution, and the chief inducement to pay such taxes is the elective franchise which is made dependent

upon its payment. The Sections quoted above showing when such tax is due and when delinquent are primarily for the purpose of determining when a person is entitled to vote, but they also assist in arriving at the conclusion reached herein,—that a poll tax is due on the 1st day of October from every patriotic citizen who is at *that time* 21 years old and not over 45 years of age.* I remain,

Yours very respectfully,
ALEX. M. GARBER,
Attorney General.

*See Frost v. State, 45 So. Rep. 203. Section 4 of Act of Nov. 23, 1907. Special Session, Acts, page 69. Also Finklea vs. Farrish in MS.

When License Money Refunded.

February, 23rd, 1907.
February 20th, 1907.

Hon. William W. Brandon,
State Auditor,
Capitol.

Dear Sir:—

Replying to a verbal request from your Department to submit a written opinion in the matter of a petition of W. E. Jackson to the Judge of Probate of Marengo County, requesting the reimbursement or the refunding to him of a part of the sum paid by him for a retail liquor dealer's license, which license was issued January 1st, 1905, for that year and business discontinued under it on the 30th day of June, 1905, I desire to submit the following:

At the time the Judge of Probate issued this license, there was in force a valid and legal dispensary act for the City of Faunsdale, which prohibited the retailing of whiskey except as provided for in said Act. Mr. Jackson was subject to prosecution for the illegal sale of liquor in Faunsdale from January 1st until June 30th, 1905, as the license illegally issued by the Judge of Probate, afforded him no protection.

Brame vs. State, 38 So. Rep. 1031.
Russell vs. State, 77 Ala. page 89.

The only provision under the law for refunding license money is contained in Section 4135, Code 1896, page 1146, where a person has taken out and paid for a license to carry on a business, and is afterwards prohibited by law from carrying on such business before the time named in the license expires. It is clear that the petitioner, W. E. Jackson, cannot invoke this Section as a means of relief, for what seems to be an equitable case, for the obvious reason that there was a law prohibiting him from doing this business when he begun it and there was no law afterwards enacted which prohibited it.

Therefore, I feel constrained to advise you against the payment of this claim. Relief must be sought through some other source if secured at all. I remain,

Very respetcfully,
ALEX. M. GARBER,
Attorney General.

Record Mortgage Tax Payable on Entire Amount of Indebtedness Secured.

Hon. William W. Brandon,
State Auditor,
Capitol.

Dear Sir:—

I have your favor of the 22nd, instant, enclosing a letter from Hon. Samuel E. Greene, Judge of Probate of Jefferson County, of date Feb. 21st, 1907, in which Judge Greene requested an opinion on the following state of facts: The Birmingham Waterworks Company filed in the office of Judge Greene on February 21, 1907, for record a mortgage or deed of trust securing $5,000,000 of bonds, the tax upon which, under Subdivision 7 of Section 3911 of the Code, as amended by the General Revenue Law of 1903 (General Acts, page 227) amounts to $7,500, and Judge Greene states that this amount was paid to him by the person filing the deed of trust for record, but that his attention was called to the fact, at the time the

papers were filed for record and the tax paid thereon, that the deed of trust recited that $2,500,000 of the bonds were to be held by the Trustee for the purpose of retiring a like amount of bonds issued by the same Company in 1899 and secured by another deed of trust to the same Trustee, which deed of trust was, in 1899, duly recorded in the office of the Judge of Probate of Jefferson County, and the claim was made that the indebtedness really secured by the deed of trust last filed was $2,500,000 and not $5,000,000 and consequently the tax should not be collected on the principle sum expressed in the trust.

I agree with the construction given the law by Judge Greene, namely: That the tax should be paid upon the gross amount of the debt mentioned in the instrument without reference to the disposition of the proceeds of the instrument. It is wholly immaterial to the question that part of the indebtedness mentioned in the instrument was for the purpose of retiring bonds previously issued by the Company. The last instrument not only secured an additional indebtedness, but was a renewal and an extension of the time of payment of the existing indebtedness and in my opinion comes clearly within the terms of said Subdivision Seven. It seems clear from Judge Greene's letter that the old deed of trust to the same Trustee, securing the $2,500,000 of bonds, which were issued in 1899, is cancelled and this deed of trust is substituted to secure the payment of the new issue of $2,500,000 of bonds which take the place of those retired and also secured the additional issue of $2,500,000 of bonds, making a total indebtedness of $5,000,000 secured by the last instrument.

I herewith return Judge Greene's letter.

Very respectfully,
ALEX. M. GARBER,
Attorney General.

Costs in Habeas Corpus Cases.

February 25th, 1907.

Dr. Shirley Bragg, President,
Board of Convict Inspectors,
Montgomery, Ala.

Dear Sir:—

I have been delayed on account of the presence of many pressing matters in my office in replying to your letter of January 16th, in which you enclosed a cost bill in the habeas corpus case from Crenshaw County.

In response to your request for an opinion relative to the payment of same along with other items in the bill of cost presented on the subsequent conviction of the defendant, I desire to say that while the fees of the Clerk and Sheriff which accrued for services performed by them in the habeas corpus case before Chancellor Parks seems to be a fair and reasonable claim from an equitable stand point, yet I find no authority of law for their payment by you. Sections 4847 and 4849 of the Criminal Code of 1896, standing alone, and in the absence of other enactments of law on the subject, would probably authorize the payment of such items of cost upon the subsequent conviction of the defendant. An Act of the Legislature, approved February 18th, 1907, see margin of page 214, Criminal Code 1896, note to Section 4511, provides for the payment out of the convict fund of certain items of cost in felony cases. A careful analysis of Sections 1 and 3 of this Act forces me to the conclusion that it places limitations upon the above quoted Sections 4847 and 4849 of the Criminal Code, and that under it you have no authority to pay any items taxed in a bill of cost in a felony case except such as are specifically enumerated in said Act.

I herewith return to you the file of papers originally enclosed to me. I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Exemption of Cotton Mills From Taxation.

March 5, 1907.

Hon. B. B. Comer,
Governor of Alabama,
Montgomery, Alabama.

Dear Sir:—

In response to your request for my opinion upon the two following questions, viz.:

First: What cotton mills built since March 5, 1901, are exempt from taxation (under the Act of the Legislature approved March 5, 1901) and how long such exemption from taxation continues under said Act?

Second: What cotton mills built since October 9, 1903, are exempt from taxation (under the Act of the Legislature approved October 9, 1903) and how long such exemption continues under said Act?

I beg to submit the following:

In reply to your first inquiry: Section 4 of the Act of 1901 (page 2600), entitled any person, partnership, association, or Alabama corporation to claim and have exempt from taxation any cotton mill or factory, and all necessary buildings and appurtenances thereto in every case where not less than $50,000.00 in money has been expended in the erection of such cotton mill or factory since February 13, 1897, and before the 13th day of February, 1902, for the period of ten years from the 13th day of February, 1897. Under this Act the capital stock of every such cotton mill or factory is likewise exempted from all taxation. The act also embraces under said exemption from taxation additions costing $50,000.00 or more made between Feb. 13, 1897 and Feb. 13, 1902, to cotton mills then existing in Alabama. The lands on which such cotton mills or factories are erected, however, are not exempt from taxation. It seems clear that the extreme limitation of the exemption from taxation under this Act is February 13, 1907.

In reply to your second inquiry: I refer you to an Act of the Legislature approved October 9, 1903, (Acts of 1903, page 565). Section 1 of this Act exempts from taxation

such cotton mills or factories in every case where the owner thereof shall have invested since February 13, 1902, or has invested by February 13, 1907, $50,000.00 in the erection, building and construction thereof, for a period of ten years from the 13th day of February, 1902. This Act also embraces in its exemptions the capital stock of such cotton mills or factories and also all additions costing $50,000.00 or more made between February 13, 1902, and February 13, 1907, to cotton mills then existing in Alabama. It seems clear that the extreme limitation of the exemption from taxation under this Act of 1903 is the 13th day of February 1912 in every case. The lands on which such cotton mills or factories are erected, however, are not exempt from taxation,

As the law does not recognize fractions of a year in taxation, it is my opinion that cotton mills, whose exemptions expire February 3, 1907, are exempt for the entire year, 1907.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Money Hoarded—When Subject to Taxation.

March 8, 1907.

Hon. Wm. W. Brandon,
State Auditor,
Capitol.

Dear Sir:—

I have your favor of the 1st, instant, enclosing letter from Hon. Armand P. Smith, Judge of Probate of Greene County, and also the petition of Mrs. F. J. Dimick in which she requests the Commissioner's Court of Greene to refund to her the amount of certain taxes paid for the year 1906, and the Commissioners Court found the facts to be as follows: That the assessment made and returned by the tax assessor of Greene County was money hoarded or money on deposit in bank; that said money was loaned on mortgages (presumably after the assessment made) and secured thereby, and that the Revenue tax was paid thereon. And on this state of facts the Commis-

sioners Court of Greene County instructed the Judge of Probate to present the matter to you for your advice on the question of whether there was an error in the assessment as a solvent credit, under the testimony.

Subdivision 6 of Section 3911 of the Code is as follows:

> "All money hoarded, whether in the custody of the owner, or on deposit in bank or elsewhere in this State, or in another State, subject to check, draft or order; or in any safety deposit box, safe or vault or elsewhere."

The said Subdivision 6 is still in force and effect and the assessment in question appears to have been made under its terms. I heretofore advised you in accordance with the decission of the Supreme Court that Sub-division 7 of Section 3911 was repealead by the General Revenue Act of 1903, and that taxes paid on solvent credits under Subdivision 7 of Section 3911 of the Code should be refunded, but there is no reason for refunding taxes paid under Subdivision 6. The mere fact that money was, after assessment, loaned on mortgages and the mortgage tax paid thereon, is entitled to no weight in determining the question.

I, therefore, advise you that the assessment as made by the tax assessor was correct and duly authorized by said Sub-division 6 of Section 3911, and that the taxes paid should not be refunded.

I herewith return the papers forwarded to me.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Extradition of Fugitives From Justice—Practice In.

March 20th, 1907.

Hon. B. B. Comer,
Governor of Alabama,
Montgomery, Ala.

Dear Sir:

In reply to a verbal inquiry from your office in regard to the general policy of the extradition of fugitives from justice of this State and the payment of expenses incident thereto by the State, I beg to submit the following suggestions as proper and reasonable to govern in such matters:

The printed circular handed to me, hereto attached, contains the general policy which has been invoked and followed for a number of years in this State in issuing requisitions for the extradition of fugitives from justice. I would advise that it be strictly adhered to.

I would emphasize three points which should be adopted as a general rule, permitting of but few exceptions.

1st. That some public good should be subserved in the extradition of a fugitive from justice.

2nd. That the State should pay the expenses incident to such extraditions.

3rd. That before granting a requisition upon the Governor of any other State for such extradition, the Governor of Alabama should be reasonably satisfied that the evidence in the case is accessible, and a conviction can be secured if the fugitive is brought back to this State and placed upon trial.

Hence, I think that every application for a requisition should be accompanied by a statement from the Solicitor as to the character of the offense, his opinion that the public good would be subserved by granting the requisition, that the evidence is accessible and that if the fugitive is brought back and placed upon trial within a reasonable time, in his opinion such fugitive will be convicted.

I do not think that sheriffs should be required to pay any of the expense incident to the extradition of fugitives from justice who are brought back to this State, and moreover, I

think that in the counties near the Mississippi, Tennessee and Georgia lines that a wider discretion should be exercised by the Governor in granting requisitions.

I remain,

Very respectfully,
ALEX. M. GARBER,
Attorney General.

State Game Law—When Effective.

March 21, 1907.

Hon. John H. Wallace, Jr.,
State Game and Fish Commissioner,
Capitol.

Dear Sir:—

I have your favor of the 19th instant, requesting me to advise you when the game law, approved February 19th, 1907, goes into effect. The only provision in the Act regarding the time it shall take effect is found in Section 30 as follows:

> "It shall be unlawful for any person *after the approval of this Act* to hunt outside of the voting precinct, ward or beat in which he actually resides without first obtaining a license permitting him or her to do so."

Section 32 makes a similar provision in reference to hunting outside of the limits of the County.

Penal statutes do not take effect until thirty days after the adjournment of the Legislature at which they are passed, unless otherwise specifically provided in the Act.—Code, Sec. 5540. The provision quoted above from Section 30 is a sufficient expression of the Legislative intention that the penal provision of the Act should go into immediate effect, and I, therefore, so advise you.

Statutes other than penal statutes are operative from the date of their enactment unless otherwise provided in the statute.—Phoenix Carpet Co. v. State, 118 Ala. 143; Taylor v. State, 31 Ala. 383. There being nothing in the Act postponing

the time when it shall take effect, nor in fact any provision on that subject other than Sections 30 and 32, it follows that the other portions of the Act which are not penal are likewise operative from the date of approval of the Act.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Interest Payment to Alabama Girls' Industrial School.

March 27, 1907.

Hon. William W. Brandon,
State Auditor,
Capitol.

Dear Sir:—

Complying with your verbal request for me to advise you whether interest should be paid by the State to the Alabama Girls' Industrial School. Under the terms of the Act approved February 28th, 1907, I beg to say:

Section 1 of the Act approved Sept. 16th, 1903 (General Acts 1903, page 236) is as follows:

> "That there is hereby appropriated to the Alabama Girls' Industrial School, out of any money in the State Treasury, the sum of fifty thousand ($50,000) dollars, to pay for buildings, machinery and other necessary improvements which have been made for the said School and that are necessary to be made therefor. The fifty thousand dollars hereinabove appropriated shall be accepted by said Girls' Industrial School as a payment or refunding of the funds of said school to the extent of this appropriation and said amount shall be deducted from said school fund if in the treasury, or as soon as the same may come into the treasury, and no interest shall be hereafter paid on the sum appropriated herein, after the approval of this Act, and all laws and parts of laws in conflict with this Act are hereby repealed."

The Act of February 28th, 1907, omitting the title, is as follows:

> Sec. 1. "Be it enacted by the Legislature of Alabama: That on the 31st of March, 1907, there shall be paid to the Treasurer of the school, on the order of the President of the school, approved by the Governor, the first amount of interest, computed at the rate of six per cent per annum, on the several amounts of this fund, from the respective dates upon which they were severally paid into the State Treasury up to March 31st, 1907, and thereafter on the last day of every quarter there shall be paid to the Treasurer of the school in like manner, interest at the rate of six per cent per annum on the whole amount of the fund in the Treasury at the close of the quarter computing interest in any sum paid in, during the quarter.
>
> Sec. 2. "That the full amount of the proceeds of all lands sold, or leased, shall hereafter be paid into the State Treasury and the school shall, out of the money appropriated by the State for the maintenance of the school, pay all the expenses of caring for, protecting and selling the lands."

Section 1 of the Act of February 28th, 1907: "To make appropriations for the ordinary expenses of the Executive, Legislative and Judicial departments of the State, for the interest on the public debt and for public schools" contains the following: " * * * and for interest on the funds arising from the sale of the lands of the Alabama Girls' Industrial School for each year, $10,000.00 provided that no interest shall be paid to the Alabama Girls' Industrial School on any amounts except such sums as are actually received from funds belonging to said school derived from the sale of its lands."

It will be observed that under the Act of September 16th, 1903, appropriating $50,000.00 (fifty thousand dollars) to this school, that amount was accepted by said Alabama Girls' Industrial School as a payment or refunding of the funds of said school to the extent of this appropriation *and said amount shall be deducted from said school fund if in the Treasury or as soon as same may come into the Treasury and no interest shall be hereafter paid on the sum appropriated herein* after the approval of this Act," etc.

Neither the Act of February 28th, 1907, nor the provision contained in the Appropriation Act of February 8th, 1907, contains and reference to the terms upon which the $50,000.00 (fifty thousand dollars) was appropriated. Under the Act of September 16th, 1903, the total amount realized to this time from the sale of the lands of the school amounted to $36,556.68 on February 28th, 1907.

It thus will appear that there is no fund in the Treasury on which interest can be paid until the amount of $50,000.00 is reached and on any monies over that amount realized from the sale of land, interest should be paid as provided by the acts of the present Legislature quoted above."

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

See opinion on same subject dated November 7th, 1908, infra p. ———.

Cotton Seed Meal—Shipment Without Being Tagged; Analysis.

March 28, 1907.

Hon. J. A. Wilkinson,
Commissioner of Agriculture and Industries,
Capitol.

Dear Sir:—

I have your favor of the 24th instant, asking my opinion upon the following questions:

First, if under the Act approved March 2nd, 1907, prohibiting the sale of adulterated cotton seed meal as fertilizer, etc., cotton seed meal can be shipped into the State to dealers without being tagged; and second, whether such meal containing less than seven and one-half per cent of ammonia can be sold to dealers or mixers.

Section 1 of the act referred to contains the following:

> "That any person, firm or corporation offering for sale as fertilizers cotton seed meal in this State shall be required to have tags attached to each bag with a guaranteed analysis of such meal printed thereon, and, in case of sale in bulk have such analysis set forth in the contract of sale stating the per cent of ammonia, phosphoric acid and potash contained therein. Provided, that no cotton seed meal containing less than eight per cent of ammonia shall be sold as fertilizers in this State, and all such cotton seed meal containing eight per cent ammonia as above offered for sale as fertilizers in sacks, bags, or other packages or parcels shall have plainly stamped or printed in large capital letters upon the sacks, bags or other packages or parcels containing the same the words, "High Grade;" and all cotton seed meal offered for sale in sacks, bags or other packages or parcels which contains less than eight per cent ammonia, shall have plainly stamped or printed in capital letters upon the sacks, bags, or other packages or parcels containing the same, the words, 'Low Grade.'"

You will observe that the statute requires "any person, firm or corporation *offering for sale as fertilizers cotton seed meal in this State* shall be required," etc. There is nothing in the Act to prohibit shipment into the State of cotton seed meal whether the same is tagged as required by this act or not. The statute only prohibits the sale or offering for sale in this State of cotton seed meal *as fertilizers* where the provisions of the statute are not complied with. The State could not prohibit the shipment of cotton seed meal into the State from points outside of Alabama, for an attempt to do so would be violative of the commerce clause of the Federal Constitution.—Moog v. The State, (Ala.) 41 So. 16; Heymann v. So. Ry., decided by the Supreme Court of the United States, Dec. 3, 1906.

Second. Section one of the Act prohibits the sale of cotton seed meal as fertilizers when it contains less than eight per cent of ammonia, and when such cotton seed meal contains eight per cent of ammonia and is offered for sale as fertilizers

the sacks, bags or other packages or parcels containing the same shall have the words, "High Grade" plainly stamped or printed thereon. Further in section one it is provided that "all cotton seed meal offered for sale in sacks, bags or other packages or parcels which contains less than eight per cent of ammonia shall have plainly stamped or printed in capital letters upon the sacks, bags or other parcels containing the same words, 'Low Grade.'" Therefore, it apepars that no cotton seed meal containing less than eight per cent of ammonia can be sold as fertilizers in this State; but, where such cotton seed meal is not offered for sale as fertilizer the same may contain less than eight per cent of ammonia, but, in that case, the sack, bag or other package or parcel containing the same shall have printed thereon the words, "Low Grade."

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Illustrative Exhibitions of Resources of the State at Foreign and State Expositions—Authority to Make.

March 29th, 1907.

Hon. J. A. Wilkinson,
Commissioner of Agriculture and Industries,
Capitol.

Dear Sir:—

I have your favor of the 25th instant, enclosing an opinion rendered by Hon. Massey Wilson, late Attorney General, to Hon. R. R. Pool, Commissioner of Agriculture, on September 5th, 1906, concerning the authority of the Commissioner of Agriculuture to pay the expenses of making illustrative exhibitions of the resources of the State at Exhibitions. You desire to know first, whether I concur in this opinion and, if so, whether your Department can assist in exhibiting Alabama resources at expositions outside of the State.

First, I concur entirely in the opinion of Mr. Wilson.

Second, Section 376 of the Code defines the duties of the Commissioner, and subdivision 13 of that Section directs the Commissioner to prepare a convenient hand-book with the necessary illustrative maps containing such information and statistics as are best adapted to give proper information of the attractions and advantages which the State affords to immigrants, "and shall make illustrative expositions thereof whenever practicable, at International and State Expositions." Thus you will see that the Commissioner clearly has the authority to exhibit the resources of the State at exhibitions outside of the State, which may be termed, international.

I herewith return the opinion of Mr. Wilson above referred to.

Yours very truly,

ALEX. M. GARBER,
Attorney General.

(See opinion of Hon. Massey Wilson, Attorney General, on the subject. Attorney General's Report 1906, p. 178.)

License on Money Lenders.

April 3rd, 1907.

Hon. B. B. Comer,
Governor of Alabama,
Capitol.

Dear Sir:—

In reply to your verbal request to submit my construction of subdivision 56 of Section 4122 of the Code of 1896, as amended by Section 9 of the Act to further amend the Revenue Laws of the State of Alabama, approved March 7th, 1907, concerning the license imposed on money lenders, I advise you as follows: This subdivision as amended by the Act of March 4th, 1903, (General Acts 1903, p. 211, subd. 56) in force at the time of the adoption of the present revenue law was as follows:

> "Every person, firm or corporation whose principal business is lending money, and who has a fixed place of business for such purpose, shall pay an annual license of one

hundred dollars, and this bill shall apply to all corporations engaged in the said business, whether organized under the laws of the State or any other State or County, but shall not apply to banks, or banking institutions regularly organized as such, nor to any corporation which shall pay the regular privilege tax required of it."

The same subdivision of the present Revenue Law reads as follows:

"Money lenders, 56. Every person, firm or corporation *engaged in the business of lending money* shall pay an annual license of one hundred dollars, and this Act shall apply to all corporations engaged in the said business whether organized under laws of this State or any other State or Country, but shall not apply to banks or banking institutions regularly organized as such. Provided that the payment of a tax in one county of the State as evidenced by the license or official certificate of the Judge of Probate shall be sufficient."

The only essential difference in the two statutes is the omission in the present law of the words, "whose principal business is lending money and who has a fixed place of business for such purpose," and the substitution of the words, "engaged in the business of lending money."

It was evidently the intention of this statute that it should operate against those who are engaged in the business of lending money although such business is not their principal business and is conducted at no fixed place.

In Harris v. State, 50 Ala. 127, Judge Brickell held, that to engage in or carry on any business within the meaning of the Revenue Law is to pursue an occupation or employment as a livelihood or as a source of profit; but it is not necessary that it should be the party's sole occupation or employment. And see Morning Star v. State, 135 Ala. 66, to the same effect.

To engage in the business of lending money within the meaning of this statute would, therefore, require something more than an occasional loan by an individual or such loans as are made by merchants or farmers as necessary incidents to the business in which they are principally engaged.

As this matter relates to the public revenue I have forwarded a copy of this letter to Hon. Wm. W. Brandon, State Auditor.

Respectfully submitted,
ALEX. M. GARBER,
Attorney General.

Ex-officio Fees of Shelby County Officers.

April 4th, 1907.

Hon. John Purifoy,
Examiner of Public Accounts,
Columbiana, Ala.

Dear Sir:—

I have your favor of the 1st inst., requesting me to advise you whether,

1st. Under the Act of March 2nd, 1901 (Acts 1901, p. 2024) the maximum sum that may be allowed by the Commissioners Court of Shelby County, to the Sheriff, Probate Judge and Clerk of the County shall be allowed but once or each year; and

2nd. If allowed annually, in passing upon the claims provided for in this special Act, is the Commissioners Court of Shelby County to be governed by the provisions of Section 1363, of the Code?

I will proceed to answer your questions seriatim.

While it is not provided in express terms in the Act of March 2nd, 1901, I am of the opinion that it was the intention of that Act that the compensation therein fixed for ex officio services shall be allowed annually. Under the law as it existed prior to this Act the officers named in the act were entitled for ex officio services to such compensation as might be allowed them under Section 1363 of the Code, such allowances not to exceed $200.00 per annum. It was the purpose of the act of March 2nd, 1901, to increase this allowance in the four counties therein named on the basis of the population of the counties. To hold that the General Assembly intended that payment for such service should be made one time

and not more, would, I think, be unreasonable. The Act provides, near its conclusion, that the Sheriff from Tuscaloosa shall receive for such service the sum of $390.00 per annum and the Probate Judge of Tuscaloosa County, the sum of $290.00 per annum. This also may be looked to as showing the intention of the General Assembly to make compensation herein provided annually.

2nd. In passing upon the claims provided for in this Act, I am of the opinion that the Commissioners Court should be governed by the provisions of Section 1363 of the Code. There is nothing in the special Act indicating a Legislative intention to repeal that section. I remain,

Respectfully yours,
ALEX. M. GARBER,
Attorney General.

Construction of Revenue Statutes.

April 4th, 1907.

Hon. Wm. W. Brandon,
State Auditor,
Capitol.

Dear Sir:—

Some days ago you requested me to advise you when the following Acts became effective:

To further amend the revenue laws of the State of Alabama, approved March 7th, 1907. H. 610.

To provide for the revenue of the State by requiring all foreign corporations authorized to do business in the State under the laws of the State of Alabama to pay an annual franchise tax, approved March 7th, 1907. H. 611.

To amend an Act entitled "An Act to regulate the collection of poll taxes within the State of Alabama," approved February 12th, 1903. Approved March 4th, 1907. H. 612.

To make subject to taxation in this State money lent, solvent credits and credits of value and moneyed capital. Approved March 4th, 1907. H. 61.

To amend sections 1321 and 1322 of the Code of 1896, approved March 6th, 1907. H. 15.

You also request me to advise you when you shall proceed under the Acts referred to, to collect the revenue provided therein.

I will proceed to answer your letter dealing with the Acts referred to seriatim.

H. 610. Section 24 of this Act is as follows: "That this Act shall take effect from and after its passage and approval." As noted above, the Act was approved March 7th, 1907, and I therefore, advise you that the same became effective on the date of its approval. In several instances the amount of the license tax required by the previous revenue laws were increased and licenses were required for many businesses enumerated in this Act which were not before subject to license tax. The following provision is found in the Act approved March 4th, 1903, General Acts 1903, page 231: "Provided that whenever a license for the current year has been paid and the license required by this Act exceeds the amount of license paid, the amount paid shall be allowed as a credit on the new license for the current year." Wherever, therefore, the present revenue law amends the act of March 4th, 1903, by increasing the amount of the license tax fixed by that act the amount paid shall be allowed as a credit on the new, or increased license required by the present law for the current year." Ordinarily laws increasing the amount of license taxes are not retroactive, and in the absence of any legislative expression where license has been taken out and paid for, and subsequently the licensce tax has been increased, the increased license cannot be exacted of the licensee; but sections 5, 6, 7, 9, 10, and 18 of the Act of March 4th, 1907, purports to amend subdivisions of Section 4122 of the Code as amended by the Act of March 4th, 1903, and such amended subdivisions must, therefore, be read into the Act of March 4th, 1903, and when so read and considered the license taxes therein provided wherever increased become subject to the provision contained in that Act, which I have quoted above.

In some instances the present revenue law requires a license tax to be paid for engaging in a business not heretofore subject to such tax; and in all such cases such license tax is due

and payable by any person, firm or corporation engaged in such business after the approval of the Act, March 7th, 1907.

When licenses have been taken out and paid for under the old law, and such licenses have been increased under the present law a hardship may result on account of the change in the law, to some of the businesses affected, particularly, that of dealers in futures. The license has been increased from the maximum amount of $500.00 to $5,000.00. No doubt contracts have been made in connection with that business and large liabilities incurred which would make it inequitable to require such persons to cease business in case this license is not paid, and under such conditions I suggest that the question be presented to the State Board of Compromise, for such consideration as may seem just under the circumstances.

H. 611. This Act contained the following provision: "No corporation required by the provision of this act to pay a franchise tax, which corporation shall have paid license taxes for this current year, as provided by the corporation laws now in force in this State, shall be required to pay a franchise tax under this Act before the 1st day of January, 1908." You will, therefore, observe that the provisions of this Act do not apply to those foreign corporations which have paid a franchise tax for the current year under the laws in force on March 7, 1907. But as to all foreign corporations admitted to do business in this State after March 7th, 1907, the Act applies, and such corporations must pay the franchise taxes required therein and otherwise comply with its provisions.

H. 612. The latter part of this Act, beginning with the words:

> "After the Auditor shall have charged the collector with all poll taxes collected by him and checked the same as shown by the said stub he shall return said stub-book to the Judge of Probate of said County in which said poll taxes were collected, for record and filed in his office."

There is nothing in the Act fixing the time when it shall go into effect. It is remedial in its nature and, therefore, the general rule applies and it became operative from the date of its approval by the Governor.—Phoenix Carpet Co. vs. State, 118 Ala. 143.

Wherever it is practicable to comply with the new feature of this statute during this year the tax colletcor should do so. In other words the statute is in force and imposes upon the tax collector the duty of complying with the same where he has not acted under the law as it existed before March 4th, 1907.

H. 614. This Act expressly makes the property therein described subject to taxation for the year 1907. The tax year of 1907 runs from October 1st, 1906, to September 30th, 1907. All property of that description should be assessed and the taxes collected thereon when due, viz: On October 1st, 1907.

H. 615. As stated before this Act was approved March 7th, 1907. There is nothing in the act limiting the time when it shall become operative. The concluding paragraph of section 1321, as amended by this act is as follows: * * * provided that all foreign corporations which have heretofore bona fide qualified under prior existing laws, shall receive a *credit for the amount so paid by them* on any amount falling due by the provision of this Act. It thus appears that it was the intention of this Act that the same shoud apply to all foreign corporations now engaged in doing business in this State, and the admission fees therein exacted should be paid by such foreign corporations, a credit being allowed for the amount heretofore paid by them.

Respectfully submitted,
ALEX. M. GARBER,
Attorney General.

Immigration Inspectors—Within Meaning of "Anti Pass Act."

April 4, 1907.

Hon. B. B. Comer,
Governor of Alabama,
Capitol.

Dear Sir:—

Some days ago you referred to me a letter from Hon. Frank Y. Anderson, from Birmingham, requesting my construction of the term "Immigration Inspectors" as used in the Act ap-

proved February 14th 1907, known as the "Anti Pass Act." Section one of this Act provides, "that no common carrier * * * shall give, procure for or deliver to any person any free passes * * * except to * * * railway mail service employees, post-office inspectors, customs inspectors and immigration inspectors. * * *"

An inspector is defined as one who inspects or oversees; one to whose care the superintendence and execution of any work is intrusted. The title is given to any official who tests or examines into the condition and carrying out of matters affecting the public interests. The term as you will observe has a very wide meaning and when used in connection with immigration would, I take it, include any person who was engaged in the work of locating or endeavoring to locate immigrants. In Mr. Anderson's letter he states that the Alabama State Land Company employs agents whose business it is to locate immigrants from the North and West on land owned by the company in this State; that those agents go to the North and West and present to proposed immigrants the advantages and other matters of interest concerning the lands owned by it with the view of inducing them to come to Alabama and purchase its lands. I have no doubt that the term "Immigration Inspectors" as used in the law above referred to includes such agents.

I herewith return Mr. Anderson's letter addressed to you.

Respectfully submitted,

ALEX. M. GARBER,
Attorney General.

"Fertilizer Factory" and "Fertilizer Mixing Plant," Defined.

April 4th, 1907.

State Tax Commission of Alabama,
Capitol.

Gentlemen:

Replying to your communication of the 2nd instant, requesting me to define the difference between a "fertilizer factory" and a "fertilizer mixing plant or factory;" as used in Section

20 of the Act approved March 7th, 1907, entitled an Act "To further amend the revenue laws of the State of Alabama," I beg to submit the following:

Section 20 is as follows:

> "Any person, firm or corporation owning or operating any fertilizer factory shall pay an annual license of two hundred dollars for each factory, and each fertilizer mixing plant or factory shall pay an annual license of ten dollars."

A fertilizer factory or manufactory must be held to include any factory where the several ingredients of the fertilizer are combined in certain proportions resulting in the commercial product. A factory of this character manufactures one or more of the several ingredients of the fertilizer. And a mixing plant, in my judgment, includes any plant where all the ingredients of the fertilizer are mixed and none of which are manufactured.

The field of operation of the last clause of Section 20, referring to mixing plants, therefore, can only be limited in extent and should include only such plants as are engaged in the business of mixing all the ingredients of the fertilizer, and manufacturing none of such ingredients.

Very respectfully,
ALEX. M. GARBER,
Attorney General.

Private Incorporated Bank May Be Designated Depository.

April 10th, 1907.

Hon. W. D. Seed,
State Treasurer,
Capitol.

Dear Sir:—

I have your favor of the 6th instant, requesting me to advise you whether, under Section 1 of the Depository Act (House Bill No. 167) a private bank doing business in this State may be designated as a Depository under the Act.

Said Section is as folows:

> "Be it enacted by the Legislature of Alabama that the Governor is hereby authorized to designate any bank or trust Company incorporated under the laws of this State, or of the United States, and actually doing business in this State as a State Depository as hereinafter provided."

I understand your letter to refer to a private bank *incorporated* under the laws of this State. If incorporated, such private bank may be designated as a Depository. The language of the statute,—"any bank or trust Company," etc., is broad enough to include, in fact was intended to include, private banks which are incorporated under the laws of this State.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Mine Inspection—Authority of Board of Examiners.

April 15th, 1907.

Captain J. M. Gray,
Chief Mine Inspector,
Birmingham, Alabama.

Dear Sir:—

Some time ago you addressed me a letter requesting my opinion on the following propositions:

1st. Does the Act of Feb. 16th, 1897 (Acts 1896-7, page 1099) repeal the Act of Feb. 18th, 1891 (Acts 1890-1, page 1362)?

2nd. Whether the present Chief Mine Inspector and Board of Mine Examiners have the authority to issue a service certificate at this time, where the applicant could give proof that he was acting as a mine foreman before or at the time of the passage of the Act of Feb. 18th, 1891?

3rd. Whether mines working not more than twenty miners are subject to the jurisdiction of the Mine Inspector, and whether such mines should be required to have a foreman with a certificate?

I will proceed to answer your questions seriatim:

1st. I am of opinion that the Act of Feb. 16th, 1897, repeals the prior Act of Feb. 18th, 1891, in so far as the latter is inconsistent with the former.

2nd. Under Sec. 7 of the Act of Feb. 18th, 1891, the Board of Examiners was vested with authority "To examine and give certificates of fitness of service to mine bosses and after twelve months from the passage of this Act any person, other than those now acting as mine bosses, unless they have a certificate of fitness of service given by the Board created as above." In the absence of any further statute on this subject it is very clear that any person who was acting as a mine boss on Feb. 18th, 1891, might be employed as such without being required to obtain the certificate of fitness of service mentioned in said section 7. But Sec. 16 of the Act of Feb. 16th, 1897, provides that applicants for 1st and 2nd mine foreman's certificate shall have certain qualifications and the Board of Examiners is authorized to grant certificates of competency of two grades, and it is provided in Sec. 17 of that act "That no person shall act as foreman in any coal mine in this State generating explosive gases unless he is in possession of a 1st class certificate of competency." I understand that the terms "mine boss" and "mine foreman" are used in the same sense and it, therefore, appears that mine foremen are required, under the later act, to obtain the certificates therein mentioned before being entitled to act in that capacity, and there is nothing in the last act excepting from its provisions those who were acting as mine bosses at the time of the approval of the Act of Feb. 16th, 1891. I, therefore, advise you that there is no authority for issuing a service certificate to an applicant who could prove that he was acting as a mine foreman before or at the time of the passage of the Act of Feb. 16th, 1891.

In this connection, however, I will say that there is nothing in the Act of Feb. 16th, 1907, requiring the examinations therein mentioned to be in writing and whether it shall be oral or written is within the discretion of the Board of Examiners. This discretion, however, should be exercised with extreme care by the Board as the precedent for an oral examination once set might embarrass them unless it should be adopted uniformly upon request of applicants.

3rd. Under the Act of Feb. 18th, 1891, mines employing not more than twenty miners were not subject to the provisions of the Act, but under the Act of Feb. 16th, 1897, there is no provision exempting from its operation mines empoying more or less than twenty miners; and, therefore, all mines regardless of the number employed, are subject to the jurisdiction of the Mine Inspector, and should be required to have a foreman with a certificate.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Rural School House Act—Construction of.

April 22, 1907.

Hon. Harry C. Gunnels,
Superintendent of Education,
Capitol.

Dear Sir:—

I have your letter of March 26th, requesting me to advise you concerning certain provisions of the "Rural School House Act" approved March 2nd, 1907. In reply I beg to advise you as follows:

1st. The title of this Act is as follows: "To appropriate annually $67,000.00 or so much thereof as is necessary to aid rural school districts in this State to erect or to repair public school houses." Its purpose is clearly expressed in the above title and its character is distinctly remedial. There is nothing in the body of the Act as to when it shall become operative. It cannot be contended that in the absence of a specific direction on this point there existed any legislative intent to postpone the operation of this act to a future date. It is well settled that unless a different time is specified, statutes take effect and become operative from the day of the approval by the Governor. Phoenix Carpet Company v. State, 118 Ala. 143; Taylor v. Hand, 31 Ala. 383; Bank of Mobile v. Murphy, 8 Ala. 119. Therefore, it is manifest that this Act became effective on March 2nd, 1907, the date of its approval by the Governor, and I so advise you.

2nd. It is clearly the purpose of this Act to render aid only to *rural* school districts in the erection and repairing of public school houses and the provisions of Section 2 expressly exclude any school district, a part of which lies in an incorporated city, town or village. The word "incorporated" must be held to qualify and describe each of the three words "city", "town" and "village."

3rd. Whenever the erection of a rural school building has been begun and has not been completed before the passage of this act, I think such school house should receive the benefits of this Act and you would be authorized to so hold, provided the County Board of Education, upon application by the district trustees to the County Superintendent of Education and its submission to said Board, approves such application for aid, after having ascertained that all the conditions of Section 2 of said Act have been complied with, and if the plans of said building, under course of construction, are endorsed by you.

4th. The following provision is found in the last lines of Section 3 of this act: "No money shall be appropriated for the erection of a *new* school building on a plat of ground of less dimensions than two acres." The meaning of the language employed here is too obvious to admit of any doubt. The restriction upon the erection of a new school building on a plat of less than two acres is plain, and it is equally apparent that this restriction does not apply to the school houses already erected on a plat of less than two acres. Repairs on such a school lot, of less than two acres, therefore, may receive the aid of the funds appropriated under this Act.

5th. Construing this Act as a whole, it is my opinion that it appropriates $67,000.00 annually for the purposes named in the Act. From Section 1 it would appear that $67,000 or only so much thereof as is necessary is appropriated, but when construed in connection with the following provision in Section 5:—"provided further that if at the end of any year the *whole appropriation* for that year has not been exhausted, the State Auditor and the State Treasurer shall carry the unexpended balance forward and this balance shall be available in addition to the regular appropriation for the current year," it is clear that it was the manifest intention of the Legislatre to appropri-

ate and set aside $67,000.00 each year to aid rural school districts and such evident intention of the Legislature must control.

Brooks v. Mobile School Comrs., 31 Ala. 227.
Sale v. State, 68 Ala. 530.
Lehman, Durr & Co. v. Robinson, 59 Ala. 219.
26 Am. & Eng. Ency. of Law, (2) p. 616.

You will observe that Section 1 provides that not more than $1,000.00 of the annual appropriation shall be used in any one County in a separate fiscal year, but this provision cannot be held to apply to the unexpended balance mentioned in Section 5, which is made available in addition to the regular appropriation for the current year.

6th. Where this appropriation is used for merely repairing a rural school house, the Act does not require the plans of such school house to be endorsed by the State Superintendent of Education.

7th. The Deed provided for in Section 4 of this Act should be made to "The State of Alabama for the benefit of_____ district of_____county and should convey a fee simple title. Therefore, I advise you to instruct your County Superintendent of Education to accept only deeds which pass an absoltue and unconditional title to the State of Alabama. I advise also that you require these deeds to be sent to your office for inspection before requesting the State Auditor to draw his warrants as provided in the Act. They should also be filed in your office permanently for safe keping.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney-General.

Foreign Corporation—What Constitutes Doing Business By.

April 22nd, 1907.

Hon. Wm. W. Brandon,
State Auditor,
Capitol.

Dear Sir:—

In am in receipt of your letter of April 4, submitting the inquiries contained in the letter addressed to you by Hon. A. O. Lane, of Birmingham, dated March 30, 1907.

Upon a careful examination of the printed pamphlet containing the General Laws of the Legislature of Alabama, passed by the first session, I do not find H. B. 334 and H. B. 336 recorded therein. Upon inquiry at the office of the Secretary of State I am informed that his books do not show that these bills were passed. I suggest that it might be well to make further investigation about these bills.

In response to the question as to whether or not the Philadelphia Company, under the facts submitted by Judge Lane, is engaged in business in Alabama, I beg to submit the following:

1st. The acts of the Company's Attorney in Birmingham who examines the abstracts of title and files the papers for record for the Philadelphia Company and to whom remittance is forwarded by the Company when it makes a loan, to be delivered to the borrower, constitute in my opinion such acts of agency performed in Alabama by the Attorney for the Company as will render the said company liable for engaging in business in Alabama.

2nd. The agent in Birmingham, "representing the borrower and not said Company" is in fact the Agent of the Company. In the case of Collier & Pinckard v. Davis Brothers, 94 Ala. 456, Davis Brothers employed Collier & Pinckard to negotiate a loan for them. The complaint in this case alleged that the plaintiffs complied with their contract and negotiated the loan for the defendants, but the defendants refused to accept the same. Among other pleas the defendants interposed a plea that the loan and contract of borrowing was to be made with a foreign corporation having no authority to do any business in

the State of Alabama, having no authorized agent or known place of business in Alabama,—and that plaintiffs were in fact the agents of said corporation. In the opinion of the court delivered by Chief Justice Stone, the Court held that "If the complaint or plea had averred or shown that the agreement between Collier & Pinckard on the one side and Davis Brothers on the other was entered into in Alabama, then it would have been shown that a foreign corporation, through its agents,' or the agent of a foreign corporation, had engaged in business, or transacted business in Alabama without a compliance with our constitution and statute." It is admitted that the agent in Birmingham enters into a contract with the borrower in Alabama and forwards the application of the borrower to the Company in Philadelphia and that the papers are executed and filed for record in Alabama by the Company, and it, therefore, appears conclusively that this agent represents the foreign corporation in Alabama as well as the borrower.

Another decision bearing directly on this point and upholding my position upon this question is the case of the State v. Bristol Saving Bank, 108 Ala. 3. Justice McClellan delivering the opinion for the Court, says, "That the loan of money here and the taking of notes and mortgage to secure repayment, the mortgage being on land situated in this State, is the doing business here within both the Constitution and the statute."

In further support of the views expressed herein see the following decisions upon this question:

State vs. Anniston Rolling Mills, 125 Ala. 121.
Sullivan v. Sullivan Timber Co., 103 Ala. 371.
Beard v. U. & A. Publishing Co., 71 Ala. 60.
Dudley v. Collier & Pinckard, 87 Ala. 431.
Ginn v. New England M. & S. Co., 92 Ala. 135.
Mullins v. American Free Hold Land M. Co., 88 Ala. 280.
Chattanooga Bldg. & L. Association v. Denson, 189 U. S. 408.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Insurance Contracts, Rebates, Stock Propositions and Special Inducement.

April 25th, 1907.

Hon. Frank N. Julian,
Insurance Commissioner,
Capitol.

Dear Sir:—

Some days ago you addressed a communication to me enclosing a letter from Messrs. Dean & Dean, General Counsel for the State Mutual Life Insurance Company, Rome, Georgia, under date of April 9th, 1907, in which the plan of this company for the sale of stock in an agency company in connection with the sale of life insurance is explained; and you desire to know whether the proposed plan is in violation of section 2602 of the Code.

Prior to the receipt of your letter Hon. A. C. Sexton, Deputy Insurance Commissioner, addressed a communication to me of date April 3rd, 1907, requesting me to advise him regarding the plan of the Rome Company and also regarding the plans of the Southern States Life Insurance Company, an Alabama corporation, Philadelphia Life Insurance Company, of Philadelphia, The Citizens Life Insurance Company of Louisville, Ky., and the Meridian Life & Trust Company, of Indianapolis, Ind. In connection with his letter Mr. Sexton handed me a number of letters received from Insurance Commissioners of the several States responding to a letter of inquiry from him desiring to know their views on similar questions, and I have also received from your Department quite a number of letters, pamphlets, briefs and miscellaneous publications dealing with this question, and briefs for and against the legality of the plans have also been presented to me for my consideration. It appearsfrom an examination of the plans of the several companies above referred to wherein life insurance is offered in connection with stock, that the State Mutual Life Insurance Company proposes to sell stock in an agency company in connection with life insurance; that the Southern States Life Insurance Company proposes to sell, through an agency company, the stock of the Southern Securities Company, the last named company practically owning the insurance company; that the Philadel-

phia Life Insurance Company and the Citizens Life Insurance Company both offer their own stock for sale in connection with life insurance; that the Security Life Insurance Company of America has contracted with Mr. Ed. L. Williams as its General Agent, for a number of States and the latter has transferred this contract to the Southern Guaranty Company, a corporation, and the last company proposes to sell its stock in connection with the insurance of the Security Life Insurance Company, and the Meridian Life & Trust Company and the Citizens Life Insurance Company both desire to offer a Special Advisory Board Contract in connection with life insurance. This opinion deals only with stock propositions and the advisory board contracts will be considered in another communication to you. All that is said herein is intended to apply to the plans of the several companies above named so far as their plans relate to the sale of stock.

Section 2602 of the Code contains three distinct propositions which for convenience I have grouped as follows:

(1) No life nor any other insurance company nor any agent thereof shall make any contract of insurance nor agreement as to policy contract other than is plainly expressed in the policy issued thereon;

(2) Nor shall any such company or agent pay or allow or offer to pay or allow as inducement to insurance any rebate or premiums payable on the policy,

(3) Nor shall any particular policy holder of the same class be allowed any advantage in the dividends or other benefits to accrue thereon or any valuable consideration or inducement whatever not specified in the policy contract of insurance.

With all of the companies referred to above where it is proposed to sell stock of an independent corporation in connection with life insurance, the two companies sustain close and intimate contractual relations to each other and there can be no escape from the conclusion that the sale of the stock must be considered as an agreement as to a policy contract within the meaning of subdivision 1 of section 2602; and, therefore, that the agreement regarding the stock must be plainly expressed in the policy of insurance and offered to every body alike. It has been argued with great vigor before me that the two propositions must be kept separate and distinct because the life in-

surance company and the stock agency company are separate legal entities. But on account of the relations they sustain to each other, in my opinion, the plans must be considered together. And, therefore, I advise you that in every such case the terms and conditions relative to the sale of the stock should be plainly expressed in the policy issued by the Company. This, of course, is equally applicable to those companies that propose to sell their own stock in connection with insurance.

The method of selling stock by the Insurance Companies or their subsidiary or auxiliary companies above referred to, does not involve a rebate of premiums payable on the policy as the term "rebate" is used in sub-division 2 of section 2602. The most that can be said of the plan in this connection is that the holder of the agency stock is entitled to the dividends earned thereon by the agency company or in the case of the Life Insurance Company, the dividends earned by that Company. In each case the holder of the stock pays for the right to participate in such dividends in addition to paying the premium on the life insurance policy.

It only remains to be determined whether or not the option to purchase stock offered to certain insurants would constitute such holders of stock a "class" within the meaning of sub-division 3 of section 2602.

The word "class" as used in the statute, in my opinion, means simply a distinct and separate group or set of insurants who pay uniform premiums proportionate to age or whose policy contracts are similar in respect of their essential basic or elemental features. But this does not mean that an Insurance Company can constitute at will a "class" by varying the policy contract slightly, or by modifying it in some collateral feature, not effecting a change in its basic or elemental characteristics. Hence, I hold that there must of necessity be some other distinction in "class" than the mere enjoyment by one of an option or privilege to purchase stock not enjoyed by another.

The suggestion that if the contract of one policy holder contains the option and the contract of another policy holder does not contain the option to purchase stock there is equality among the persons holding contracts containing the option, thus constituting one "class" and among those whose con-

tracts do not contain the option, thus constituting another "class," is inconsistent with the purpose of the statute and with my construction and understanding of the word "class."

So that if the option to purchase the agency stock is printed in and made a part of every policy of insurance and is given alike to every policy holder, the statute will be complied with. In order that this may be done it is not sufficient for the agent of the company merely to offer insurance and the agency stock, giving the person to whom the stock is offered the right to decline to make the purchase, but the right or option to purchase must be printed in every policy whether previously accepted or rejected by the policy holder. Any other requirement than this would leave the matter open to evasion. In addition to the requirement that the option shall be printed in each policy, the stock must be offered for sale to every person upon the same terms both as to number of shares and payment for same and there must be no reduction in the price of the stock conditioned on the prospective policy holder taking out a policy.

The question here presented is the subject of comment and criticism in many of the documents handed me by Mr. Sexton when I begun my investigation, and it seems that many of the Insurance Commissioners over the country are opposed to similar plans; this, on the general principle that it is violative of public policy to permit inducements of any nature to be offered in connection with life insurance and, principally, however, for the reason that the prospective dividends to accrue on the agency stock are very much inflated, impossible of realization and, therefore, deceptive and fraudulent, but this is a matter for the prospective share holder to settle for himself. He may or may not realize the results claimed by the agency company.

Life Insurance has become a business of such vast and wonderful proportions and is regarded in the light of such a necessity, that the State has assumed the duty and the right of regulating and controlling it in order that its citizens shall be fairly treated by insurance companies. Such was the purpose of the law in vesting you with authority of general supervision over all companies in Alabama, and it is your duty, within the scope of your authority, to see that no Insurance Company

adopts any plan of insurance, although it may be within the letter and form of the statute, which is in effect and result a violation of its spirit and intent, and thus in violation of public policy and to the injury of its patrons within the State.

The subsidiary companies above referred to whose stock is proposed to be sold in connection with life insurance are creations of the insurance companies and organized primarily to serve the insurance companies. They occupy the most intimate relation to each other, although it is true they possess separate entities and are distinct corporations, having only contractual relations with the insuranec companies.

You will observe, however, that in requiring the option or right to purchase stock to be printed in the policy contract, I have proceeded upon the theory that in each case the Insurance Company and the subsidiary company are so intimately connected that the insurance contract and the stock option must be construed as an entire contract; and therefore, it is of obvious importance that the contracts between such companies should be carefully examined by you and the stipulations and agreements closely scrutinized to prevent such exactions and terms in the contract as would result in palpable deception and unfairness to the citizens of this State who contract with them.

I have found much difficulty in reaching what I consider a correct construction of section 2602. Its meaning is not altogether free from doubt. Its language is somewhat involved and susceptible of ambiguity; and I would suggest that you recommend to the Legislature the adoption of such amendments or additions to the insurance laws as may seem advisable in your judgment, as the result of your practical experience in dealing with insurance questions.

I beg to say that it has been impossible to render you this opinion sooner, owing to many other important and pressing official duties.

I remain,

Respectfully yours,
ALEX. M. GARBER,
Attorney General.

Attendance and Mileage of Witnesses Before Legislative Committee.

May 1st, 1907.

Hon. B. B. Comer,
Governor of Alabama,
Capitol.

Dear Sir:—

In response to a verbal request to advise you with respect to the attendance of witnesses before the joint committee to investigate fertilizer trusts and etc., and the payment of fees to said witnesses, I beg to submit the following:

The Senate Joint Resolution (see page 348 of the printed pamphlet of the General Laws) contains the following provision: "Be it further resolved that said committee shall have power to summon witnesses before it and compel their attendance by compulsory process." This provision confers the power upon this committee to compel by compulsory process the attendance of all witnesses summoned to appear before it. The resolution contains, however, no provision for the payment of any fees to such witnesses, and in the absence of a special provision conferring the authority upon the State Auditor or some other state official to pay the fees of said witnesses upon the proper certificate of the Chairman of this committee, I know of no way under the General Laws by which said witnesses can be paid for their attendance.

I can only suggest that this committee give to each witness appearing before it in answer to a summons, a certificate showing the number of miles travelled and the number of days in attendance before said committee, and when the Legislature reconvenes in July a bill for the relief of these witnesses and for the officers who executed service be passed allowing said witnesses for their attendance, the same fees provided under section 1336 of the Code for witnesses in attendance upon Circuit Courts of this State, and to the sheriffs executing service, the fees allowed to sheriffs under section 1377 of the Code, or such fees as the Legislature may deem fair and reasonable under the circumstances.*

Very respectfully,
ALEX. M. GARBER,
Attorney General.

*(The Legislature made an appropriation to cover the fees of witnesses and officers above referred to.—General Acts 1907, page —.)

License Money Under Barbour County Dispensary Act—Disposition of.

April 30th, 1907.

Hon. Wm. W. Brandon,
State Auditor,
Capitol.

Dear Sir:—

Your favor of the 20th instant, was duly received, submitting the following proposition for my opinion:

Under section 5 of the Act approved February 14th, 1891 (Acts 1890-1891, page 703) all moneys collected from license from the sale of liquor in beat five in Barbour County, have been paid over to the City of Eufaula to be used as provided in that section. The recent Legislature passed an Act approved February 7th, 1907, authorizing the City of Eufaula to establish a dispensary for the purchase and sale of liquor, and you desire to know whether or not the license money paid by that dispensary must be paid over to the City of Eufaula under Section 5 of the Act of February 14th, 1891.

It is my opinion that the license money paid by the City of Eufaula for operating said dispensary must be paid over to the City of Eufaula under the terms and for the purposes named in said section 5 of the Act of February 14th, 1891, and I will proceed to give you my reasons for this opinion.

The title of the Act of February 14th, 1891, is "To establish a separate school district in the City of Eufaula, Barbour County, Ala., and to provide means to support said separate school district." Sec. 5 of this Act provides, "That the City of Eufaula as such school district * * * shall also receive all moneys which are or may be collected from license for the sale of liquor in Beat 5 in Barbour County, all such funds to be drawn from the proper authorities, and disbursed by the city superintendent of education," etc. Under the terms of this act it is clear that all moneys heretofore collected by the State from license for the sale of liquor in that place were properly paid over to the City of Eufaula, and there would be no question of the correctness of this application of that money were it not for the act of February 7th, 1907, authorizing the City of Eufaula to Establish a dispensary. But there is

nothing in the dispensary act to indicate any purpose on the part of the Legislature to deprive the City of Eufaula, as a separate school district, of *the moneys collected from license* paid by the City of Eufaula to operate the dispensary. Nor is there any other act, so far as I am able to find, indicating a legislative intent to divert the use of this license money from the purpose named in the act of February 14th, 1891.

In accordance with your suggestion, I have forwarded a copy of this opinion to Hon. H. C. Gunnels, Superintendent of Education. I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

State Immigration Board—Authority and Duties.

April 30th, 1907.

Hon. B. B. Comer,
Governor of Alabama,
Capitol.

Dear Sir:—

In response to your letter of April 9th, requesting me to give you an opinion as to my construction of section 9 of an Act "To establish an Immigration Board for the State of Alabama, etc.," approved March 4th, 1907, page 254, printed pamphlet of the General Laws, I beg to submit the following:

Section 9 reads as follows:

> "Be it further enacted, That it shall be unlawful for any person, firm, association or corporation to bring or cause to be brought into the State of Alabama, any immigrants from any foreign country in any other way than through the Department of Immigration Board, and any such person, firm, corporation or association who shall violate the provisions of this act shall be guilty of a misdemeanor and upon conviction shall be fined not less than $1,000."

The question embodied in the letter of the Southern Colonizing Company to Mr. W. B. Davidson, of Montgomery, enclosed in your letter to me is as follows: "Does it (section 9)

mean that any person or firm who may own land in the State of Alabama cannot bring into the State and put upon their own property any people they may see fit to bring into the State whether from other parts of the United States or from any foreign country without obtaining the consent of the Immigration Board."

It is to be observed that section 9 in clear and specific terms defines the class of immigrants which shall not be brought into the State of Alabama except through the Immigration Board. The words used in the statute are "* * * to bring or cause to be brought into the State of Alabama any immigrants from any foreign country in any other way than through the Department of Immigration Board." The language employed is unmistakable and it clearly prohibits any person, firm or corporation from bringing into the State foreign immigrants unless it is done through the State Board. On the other hand, the language employed in this statute cannot, in my opinion, be so construed as to bring "immigrants" from other parts of the United States within the inhibition of the statute, neither would foreign born persons who have become naturalized citizens of other states fall within the prohibition of this statute. Therefore, residents of other states and foreign born persons, who have become naturalized citizens of this country in other states, may be brought into this State other than through the Immigration Board.

What is stated above answers the questions raised in the letter addressed to you by Mr. M. V. Richards, Land & Industrial Agent of the Southern Ry. Company of date March 4th, 1907, which letter you referred to me for my opinion.

All that I have stated in this opinion concerning foreign immigrants must be considered in the light of the Acts of Congress regulating immigration, which acts are construed in two opinions of the Attorney General of the United States to the President dated respectively March 6th, 1907, and March 20th, 1907.

Very truly,
ALEX. M. GARBER,
Attorney General.

Alabama Industrial SchooiFor White Boys—Disbursement of Appropriation For.

May 2nd, 1907.

Hon. B. B. Comer,
Governor of Alabama,
Capitol.

Dear Sir:—

You recently requested me verbally to advise you on the following questions:

1st. Whether under the act of March 7th, 1907, (Pamphlet, Act 1907, page 307) making appropriation for the maintenance of the Alabama Industrial School for white boys for the years 1907, 1908, 1909 and 1910, the word "inmate" as used in that act includes teachers of this Institution for which the school may be paid $100.00 per annum.

2nd. Whether the sum of $3,500.00 appropriated in said act is an appropriation for each of the four years named.

3rd. Whether the Institution is entitled to be paid $100.00 per annum for the maintenance of inmates who pay an annual tuition.

1. The word "inmate" as used in that act *does not,* in my opinion include *teachers* of the Institution for whom the school may be paid $100.00. This Institution was incorporated by a special act of the Legislature, approved February 23rd, 1899, (General Acts 1898 and 1899, page 158). Section 6 provides "That it shall be the duty of said school, and it shall have the power, to receive, care and provide for the welfare of white children, between the ages of six and eighteen, who by their cause of conduct or surroundings, are likely to become base or criminal, or hurtful to the State, or the best interest of society, to be committed to its keeping by the parents or parent, under the provisions of this act, or who may be voluntarily committed to its keeping by the parents or parent, or person having them in charge, or who, having no parents, guardian or other person to care for them voluntarily commit themselves to its keeping." Section 7 provides for the commitment of such classes of children to the Institution by the courts and judicial officers.

Sections one and two of the Act of March 7th, 1907, are as follows:

> "Section 1. That the sum of twenty thousand dollars per year is hereby appropriated out of any money in the State Treasury, for the support and maintenance of the Alabama Industrial School for White Boys for each of the years 1907, 1908, 1909 and 1910."
>
> "Sec. 2. That the State Auditor be, and he is hereby authorized and directed to draw his warrants on the State Treasury in favor of the Treasurer of the Alabama Industrial School for the payment in equal quarterly installments, of the sum hereby appropriated to the support and maintenance of said school for each of said years provided not more than one hundred dollars per annum shall be paid for the maintenance of each inmate of said school;" provided, further, that of the above appropriation, the sum of thirty-five hundred dollars may be used for repairs, improvements and supplies in addition to the sum of one hundred dollars for the maintenance of each inmate of said school."

A child included in one of the classes named in section 6 or 7 of the Act of February 23rd, 1899, is an "inmate" of the Institution in the sense in which this word is used in the act of March 7th, 1907, and it could not have been the intention of the Legislature to refer to a teacher of the Institution by the word "inmate."

2nd. The sum of $3,500.00 appropriated in the act of March 7th, 1907, for repairs, improvements and supplies is not an appropriation for each of the years named in the act but merely an appropriation of that amount out of the entire sum appropriated for the support and maintenance of the school for the four years.

3rd. The Institution is entitled to be paid $100.00 per annum for the maintenance of each inmate of the school regardless of whether such "inmate" pays annual tuition. No other conclusion can be reached from the language employed in the act of March 7th, 1907. "No more than $100.00 per annum shall be paid for the maintenance of each inmate of said school."

Had it been the intention of the Legislature to further restrict the payment to those inmates who did not pay tuition, that intention would have been clearly expressed.

I herewith return the Examiner's report upon this Institution.

Very respectfully,
ALEX. M. GARBER,
Attorney General.

Citizen Not Qualified Elector, Ineligible to Hold Office.

May 16th, 1907.

Hon. Harry C. Gunnels.
State Supt. of Education.
Capitol.

Dear Sir:—

Some time ago you submitted to me by letter a question involving this inquiry:

> "Is a citizen, who is not a qualified elector in Russell County, State of Alabama, eligible to hold an elective office in said County, to-wit, the office of County Superintendent of Education?"

In reply I beg to submit the following:

Neither the Constitution nor the statutes of Alabama prescribe the qualifications required of a person to render him competent to hold this office. Section 3550 of the Code of 1896 reads as follows: "Unless by special act it is otherwise provided, a County Superintendent for each County is elected at each general election as provided in this Code." See also an act, "To provide for the election of County Superintendents of Education," approved February 13tth, 1889, page 396 of the acts of 1888-89.

Upon investigation I find that it has been held in several States in cases of this character, that none but qualified electors can hold an elective office unless otherwise specially

provided. The leading Alabama case on this subject is that of Scott v. Stroback, 49 Ala. page 477, Justice Brickell, speaking for the Court in this case, asserts the following principle, "It would be at war with the spirit of our institution, to recognize as eligible to any public office one who is not a qualified voter. The right of suffrage and the capacity to hold office, unless otherwise expressly declared, must co-exist."

In the case of the State of Iowa v. Geo. Van Beek, 19 L. R. A., 622, the Supreme Court of Iowa on appeal in an action brought to determine the right to the office of sheriff delivered the following: "Our first inquiry is whether an alien can hold the office of sheriff under the laws of Iowa. There is no provision in our constitution or statutes upon that subject, yet it is certainly a fundamental principle of our Government that none but qualified electors can hold an elective office unless otherwise specially provided. * * * We are of the opinion that appellee, Van Beek, was ineligible to hold the office of sheriff prior to his naturalization."

A like principle is laid down in the case of the State v. Smith, 14 Wis. 497.

In the later case of the State v. Murray, 28 Wis. 96, the Supreme Court of that State in referring again to this question through Justice Lyons who delivers the opinion of the Court, says:

> "There is no constitutional or statutory provision, and but one judicial decision in this State, which affects this question. In The State ex rel. Off vs. Smith, 14 Wis. 497, this Court decided that a person cannot lawfully hold such an office unless he is a qualified elector of the State. The grounds of that decision are stated in the opinion by Dixon, C. J., to be, that as to all independent popular government, 'It is an acknowledged principle, which lies at the very foundation, and the enforcement of which needs neither the aid of statutory or constitutional enactments or restrictions, that the government is instituted by the citizens for their liberty and protection, and that it is to be administered, and its powers and functions exercised by them and through their agency.' In that case the defendant was an alien, and had entered upon the

discharge of the duties of the office of sheriff, to which he had been elected without having become an elector by declaring his intentions to become a citizen; indeed he had not done so when the action was commenced. Under this state of facts this Court held that he could not lawfully hold the office, but did not decide, either expressly or by necessary implication that he could not have held it had the disqualification been removed intermediate the election and the commencement of the term. It is true that it is said in the opinion that the defendant was ineligible; but it is not said that he was ineligible to be elected to such office, and the obvious meaning is that he was ineligible to hold the office. The term "ineligible" means as well disqualification to hold an office, as disqualification to be elected to an office."

The same doctrine is reaffirmed and adhered to in a still later Wisconsin case. Justice Lyons delivering the opinion of the Court in the case of the State vs. Trumpf, 50 Wis. page 103, holds as follows:

"Only two cases have been adjudicated by this Court which have any direct bearing upon the questions to be determined on this appeal. These are State ex rel. Off v. Smith, 14 Wis. 497, and State ex rel. Schuet v. Murray, 28 Wis. 96. In the first of these cases it was held to be a fundmanetal principle of our government that a person not an elector of the State is ineligible to hold a public office therein, although our constitution and statutes do not expressly so ordain. In the latter case it was held that, in the absence of any constitutional or statutory provision on the subject, such ineligibility goes only to the holding of the office, and hence, that if an alien who is not an elector receives a plurality of votes for an office, he may lawfully hold and exercise the same, if, by naturalization or declaration, his disability is removed before the commencement of the term of office to which he has been elected."

In a treatise on the law of Public Officers Mechem lays down the following general rule:

"Where no limitations are prescribed, however, the right to hold a public office under our political system is an implied attribute of citizenship, and is presumed to be co-

extensive with that of voting at an election held for the purpose of choosing an incumbent for that office; those and those only who are competent to select the officer being deemed competent also to hold the office."

Under the influence of the authorities cited above, I can reach no other conclusion than that the right to hold a public office which is elective, should be limited to those citizens who are qualified electors of the State or County over which the jurisdiction of such office extends. The Courts have evidently been governed to some extent by consideration of public policy (and I think very properly so) in deciding cases of this character and the doctrine that the right of suffrage and the capacity to hold office must co-exist appeals to me as a sound and conservative principle of law. Therefore, it is my opinion that a citizen who is not a qualified elector of Russell County is ineligible to fill an elective office of said county.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Mobile County Tax Officers—Not Entitled to Certain Fees.

May 18th, 1907.

Hon. Wm. W. Brandon,
State Auditor,
Capitol:

Dear Sir:—

You have requested me to advise you officially as to what action you should take and what obligation, if any, rests upon you as State Auditor to pay a claim, which in full amounts to five thousand, nine hundred dollars, presented to you by Messrs. Gunter & Gunter, Attorneys for the officers of Mobile County for fees claimed by said officers to be due them under a sale of certain tax lands by the State to the State Land Company made by the Auditor and Treasurer and the Governor in October 1905, upon the following statement of facts, as shown by the file of papers and other data submitted by you in this matter:

The State Auditor executed a deed to The State Land Company, dated on to-wit the 14th day of October, 1905, conveying these lands in Mobile County upon the payment by the said State Land Company into the treasury of the sum of eighty-three hundred and six dollars, as a consideration therefor, "said sum being the amount named and declared by the Governor, the Auditor and the Treasurer as the price to be paid by the purchaser." The contract, however, for the sale of these lands was made between Thos. L. Sowell, State Auditor and Chas. B. Teasley and W. A. Gunter, Jr., on to-wit, the 7th day of October, 1905. Among other things, this contract obligates Thos. L. Sowell as Auditor of the State of Alabama "to sell and convey to the parties of the second part, to the extent he is authorized by law to do, all lands in Mobile County, Alabama, which have heretofore been sold for taxes in said County, and purchased by the State; as appears from the records and documents in the office of the State Auditor relating to such sales and purchases" and "to have the necessary notices given and other preliminaries necessary to perfect this sale attended to as speedily as possible." This contract also contains an agreement that if any person is entitled to redeem any part of said lands or is entitled to purchase same in priority to parties of the second part and should redeem or purchase any part of said lands before the delivering of a deed, the amount paid into the State Treasury on account of such redemptions or sale, shall be deducted from the purchase price; it is also agreed that no demand would be made upon the State for any sum of money on account of erroneous sale of land or for any other cause whatever. The file of papers fail to show in this connection, that the necessary notices were given to the former owners of these lands as required by law. The contract mentioned above bears date October 7th, 1905, and the agreement signed by The State Land Company is dated the 14th day of October, 1905, and refers to the deed of the State Auditor as made on the same date. I gather from the documents and information before me that after deducting amount for redemptions and erroneous sales, the purchase price paid by The State Land Company to the State for these lands was five thousand dollars; that your predecessor, Judge Carmichael, on January 14th, 1907, issued a warrant to Price Williams, Jr., Judge of Probate, for the sum of twenty-five hundred dollars, which amount it seems he deemed the fair and equitable portion of the said five thousand dollars which should be paid to Mobile County for County taxes, costs and

fees of officers; that the officers of Mobile County through their attorneys are now demanding from the State the balance of the fifty-nine hundred dollars which is thirty-four hundred dollars, and nine hundred dollars more than entire purchase price received by the State; and that the transactions regarding this sale and the endorsement of the State Officers on the contract show that the sale of these lands was made under an act of the Legislature approved February 15th, 1899 (see Acts 1898-99, page 120).

I proceed to advise you in the premises, assuming as correct the facts above stated.

Article 12 of the Code of 1896, sections 4090 and 4105 inclusive, relate to the redemption of lands sold for taxes, and to sales of land by the State. It will be observed that section 4100 provides the manner and conditions under which lands which have been bid in by the State can be sold, and section 4104 directs the method of distributing the proceeds from such sales when made "under any of the provisions of this chapter." It will also be noted that when the sale is made under section 4100, the State Officers are authorized to receive in payment of the land sold only in amount which they "may ascertain to be sufficient to cover and satisfy all claims of the State and County, which sum shall not be less than the whole amount of taxes, interest, costs and officer's fees as provided for and required to be paid in case of the redemption of such lands (sec. 4091.")

In the case of Crebbs vs. Fowler, appealed from Mobile Chancery Court and decided at the November term 1906, in MS. Judge Anderson, delivering the opinion of the Court, said: "Section 4100 does not authorize a sale for a sum less in amount than would be necessary to redeem under section 4091. As the sum paid for the land was less than is authorized by the statute, the sale to the respondent was void and he had no valid assignment of the state's lien. It is contended by counsel, that the sale was made under the Act of 1898-99, p. 120, which authorizes a sale for a sum less than is required by section 4100 of the Code of 1896,, and that said section is necessarily repealed by the Act. Whether said section is repealed or not, we need not determine since it would avail the respondnt nothing in the case at bar, for if it was repealed the sale to him complied neither with the said section nor the act in question." The question before the Court in this case was one of notice to the former owner and the Court limited itself to a decision

of this question alone, refusing, as it was not necessary for the purposes of the case under consideration, to determine whether or not section 4100 was repealed by the Act of 1898. From the portion of Judge Anderson's opinion quoted above, it is clear that the Court recognized that section 4 of the Act of 1898 is repugnant to and inconsistent with section 4100 of the Code of 1896, and the implication is evident that the Court would so hold if the question was squarely before it. There can be no question but that the act of 1898 contains such material changes and modifications with respect to the price the State officers are authorized to accept in a sale of such lands that, in effect, it practically repeals sections 4100. Section 4 of the act of 1898-99 uses this language in referring to the price at which the State officers are authorized to sell such lands, "and the Auditor, with the approval of the Governor, may sell the same at a price fixed by the Auditor and the Treasurer, and approved by the Governor." I call your attention to the entire omission in the above of any duty placed upon these officers prohibiting them from selling for a sum less in amount than the whole amount of taxes, interest, costs and etc. I also call your attention to the endorsement of the State Auditor and the State Treasurer, and the approval of the same by the Governor, on the contract of October 7th, 1905, between the Auditor and Messrs. Teasley and Gunter, fixing the price of these Mobile lands; which is in words as follows: "The price as fixed by the above contract for the sale of the lands as described therein, is hereby fixed as set forth by said contract. October 7th, 1905."

It is my opinion, therefore, that the sale of the lands under discussion was made, and I think such fact is clearly shown by the papers in the case, under the authority contained in the act of 1898-99, which has been referred to above, and hence, I hold that the sale not having been made under any provision of the chapter of the Code cited above, that section 4104 does not govern in this case, and that you would not be authorized to pay any part of the claim of the officers of Mobile County for fees, which has been presented to you through their attorneys.*

I remain,

Very respectfully,
ALEX M. GARBER,
Attorney General.

*See report of case involving above matter, 47 So. 199.

Medical Department of University—Treasurer of University, Authorized to Draw Appropriation for Use of.

May 24th, 1907.

Hon. B. B. Comer,
Governor of Alabama,
Capitol.

Dear Sir:—

On May 7th, I received from your office papers sent by Hon. J. H. Fitts, Treasurer of the State University, requesting approval of a warrant for $2,500.00 under the Act approved March 4th, 1907, for the use of the Medical Department of the University of Alabama. In response to your request to give you my opinion as to whether or not the papers enclosed to me are sufficient to authorize the Auditor to draw his warrant for the above amount, I beg to submit the following:

The Act "To incorporate a Medical College at Mobile," approved Jan. 30th, 1860, created a body corporate called "The Medical College of Alabama," and vested the corporate powers of said college in a Board of Trustees and conferred upon said Board, among other powers, the power "at any time and in any manner to acquire and hold or dispose of all such real and personal estate as it may deem necessary for the purposes of said college" and "that all such property and the proceeds thereof shall be held solely and exclusively in trust, for the use and benefit of said college." This Act also appropriated the sum of $50,000.00 to be applied to the purchase of a suitable lot or lots and the erection of such buildings as a majority of the Trustees for the time being and their successors, may deem necessary and proper for the purposes of said college. Section 8 of said Act is as follows:

> "Be it further enacted, That "The Medical College of Alabama' hereby incorporated, shall constitute a department of the University of the State of Alabama, and upon the dissolution of said corporation from any cause whatever, all the property real or personal, belonging to the corporation hereby created or held in trust for it shall inure to the benefit of and vest in the University of the State of Alabama."

Section 9 of said Act is as follows:

> "Be it further enacted, That this Act may be altered or repealed upon the application of not less than two-thirds of the Board of Trustees."

Under the influence and direction contained in section 9 quoted above of the Act of 1860, the Board of Trustees of the Medical College of Alabama presented their application and petition to the Legislature of Alabama that "The corporation heretofore existing under the name of The Medical College of Alabama be dissolved," and in pursuance thereof the Legislature by House Bill 819 dissolved the corporation styled The Medical College of Alabama and enacted "That the institution heretofore known as The Medical College of Alabama is hereby declared and constituted the Medical Department of the University of Alabama and shall hereafter be under the sole management, ownership and control of the Board of Trustees of The University of Alabama." See printed pamphlet of the General Laws, page 300.

SUPREME COURT LIBRARY OF ALABAMA

An Act "To provide necessary funds for maintenance, repairs, improvements, and etc., to The Medical College of Alabama," approved March 4th, 1907, appropriated for the purposes named the sum of $45,000.00 to said college payable under the direction of the Governor, and upon the following condition as contained in section 3 of said Act, "That the money herein appropriated shall not be available, and the Auditor shall not draw his warrant on the Treasurer for said money, or any part thereof, until the title to all the property, real and personal, of every kind and description of said Medical College of Alabama shall have been vested in the Board of Trustees of The University of Alabama, and until the Board of Trustees of the University of Alabama shall have assumed full, complete and absolute management of and control over the said Medical College of Alabama." See printed pamphlet of the General Laws, page 282.

Under the certificate of Robinson Brown, the Secretary of the Board of Trustees of the University of Alabama, as shown by the copy of the resolutions adopted by said Board on the 5th day of April, 1907, which was enclosed to me by you, it appears "That the Board of Trustees of the Univer-

sity of Alabama does now assume full, complete and absolute management and control over The Medical Colege of Alabama, and accepts title to all property, real and personal of every kind and description of said Medical College of Alabama" in accordance with the provisions of the acts of the Legislature of Alabama referred to above.

My conclusions are (a) that the Legislature of Alabama was authorized upon the application of the Board of Trustees of The Medical College of Alabama to dissolve the corporation styled The Medical College of Alabama. See 9 Am. & Eng. Ency. of Law (2nd Ed.) page 551, State vs. Curren, 12 Ark. 321; Miners Bank vs. U. S. 43 Am. Dec. 115; (b) that H. B. 819 approved March 6th, 1907, does not repeal section 8 of an Act to incorporate a Medical College at Mobile, Ala. approved Jan. 30th, 1860; (c) that the said corporation has been legally dissolved; (d) that upon the dissolution of said corporation that the title to all the property belonging to it vested in The University of Alabama; (e) that the Board of Trustees of The University of Alabama has accepted the title to said property and has assumed full and complete management and control over the same.

Out of abundant caution I have advised the former Board of Trustees of The Medical College of Alabama to execute a deed from the Medical College of Alabama to The University of Alabama conveying all of the property of said institution. This has been done and the deed has been accepted by Hon. T. M. Stevens, a member of the Board of Trustees of The University of Alabama, for and on behalf of said Board, and when said instrument has been recorded, it will be filed with the Board of Trustees of The University of Alabama. I have also advised Mr. Stevens to send this deed or a certified copy thereof to you for your inspection. It is my opinion, therefore, that you are now authorized to approve the requisition for a warrant on the State Treasurer for the sum of $2,500.00. I return all of the papers enclosed to me in this matter.

I remain,

Very respectfully,
ALEX. M. GARBER,
Attorney General.

Contracts and Compensation for Making County-Maps.

May 28th, 1907.

Hon. Wm. W. Brandon,
State Auditor,
Capitol.

Dear Sir:—

Some days ago you referred to me the claim of J. K. Brockman & Company and requested me to advise you whether you should draw your warrant for the amount claimed by Brockman & Company under the authority of the Act approved Feb. 28th, 1901, (Acts 1900-1, page 1844.)

From examination of the papers enclosed to me it appears that the Board of County Commissioners of Cleburne County entered into a contract with Brockman & Company on June 5th, 1901, under the authority of the act referred to. The consideration of the contract was stated in the following language:

> "In consideration of the execution and delivery of the maps and lists of escaped property and the performance of the matters and things hereinabove set out, the Court of County Commissioners of Cleburne County, Alabama, does hereby contract, covenant and agree to and with the said J. K. Brockman & Company, their agents or assigns to pay to the said J. K. Brockman & Company their agents or assigns when collected the sum of money equal to the escaped State and County taxes, with the interest thereon, collected on the lands so shown on said lists of escaped property so prepared to have escaped taxes for five years, that is to say, on the lands so shown to have escaped assessment for the taxes of the years 1897, 1898, 1899, 1900 and 1901. The same to be in full or all compensation, fees or allowance of the said J. K. Brockman & Company, or their assigns, for constructing all of the work, labor or material on account of this contract."

Under the terms of the act under which the contract was made the Board of County Commissioners was authorized and empowered to pay such compensation for the work on behalf of the State and the County as might be agreed upon between

the parties "not exceeding an amount equal to the State and County taxes on the lands so shown to have escaped taxation for five years and the amount owing by the State under such contract shall be paid by the Tax Collector of the County out of the taxes collected by him on lands shown to have escaped as reported to him in the manner now provided by law, to the Courts or Boards so contracting to be paid said contractors and their receipts shall be a release to such collector for the amount in his settlement with the State."

It is very clear from this act that you are not authorized to draw your warrant for any amount in favor of Brockman & Company. They must look to the Court of County Commissioners of Cleburne County or to the Tax Collector—it being immaterial now to determine which,—for their compensation. It was never contemplated by the act that for such services the State should pay, but the contractor must look alone to the provisions of section two of the act referred to or to the Court of County Commissioners if that body makes a different contract.

I herewith return all of the papers forwarded me in connection with the matter.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Authority of County to Borrow Money—Payment of Certain Claims.

May 27th, 1907.

Hon. John Purifoy.
Examiner of Public Accounts,
Columbiana, Ala.

Dear Sir:—

Your favor of the 10th instant was duly received submitting for my opinion the following questions:

1st. Whether the County Treasurer of Shelby County is legally authorized to pay claims against the County for money borrowed by the County under the following state of facts:

Some time before 1906 (date not given in your letter) the Commissioners Court of Shelby County passed an order set out in your letter as follows: "Ordered that the county arrange to obtain from or through F. M. Stafford & Company the sum of eight thousand dollars payable as follows, four thousand dollars on the 7th day of Jan., 1908. It was ordered that warrants be issued as follows to pay interest on loan of eignt thousand dollars, towit: One warrant for one hundred and sixty-six dollars and forty-four cents due July 7th, 1906; one warrant for two hundred and eighty dollars due Jan. 7th, 1906; one warrant for one hundred and forty dollars due July 7th, 1907, and one warrant for one hundred and forty dollars due Jan. 7th, 1908.

It was ordered that a warrant of one hundred dollars be issued to F. M. Stafford and Company as commission for obtaining loan for County. You say concerning this order: "I presume the first order quoted above is not complete and if complete four thousand dollars was paid Jan. 7th, 1907." And further, "the borrowed money is never charged up on the County Treasurer's cash book, yet the money is disbursed by the County Treasurer, being used to cash warrants issued for ordinary County expenses."

2nd. The clerk of the Circuit Court of Shelby County and the sheriff have filed claims against the general fund of the County for costs accruing to those officers in scire facias cases where the bail are discharged and you desire to know whether these costs should be paid out of the general fund or are merely claims against the fine and forfeiture fund.

1st. The County has no power to borrow money to pay the ordinary County expenses unless that power is conferred by special legislation:

Simpson vs. Lauderdale County, 56 Ala. 64.
Allen vs. Intendant, etc. of LaFayette, 89 Ala. 641.

In Simpson vs. Lauderdale County, supra, the County was sued on a promissory note given for money borrowed for the purpose of erecting necessary bridges. In the opinion of Chief Justice Brickell, the Court held that the plaintiff could not recover because the County was not authorized to borrow the money. In Allen vs. Intendant, etc., supra, Justice McClellan

discussed this question at great length, and pointed out that in the Simpson case, "It was not sought to charge the County for that it had received plaintiff's money and *actually* used it for a legitimate County purpose, and in this case the Court held in effect that where money was borrowed by the municipality of LaFayette without authority of law for a legitimate purpose and was used and applied for the benefit of the town in a way and to an end fully authorized by its charter, a repayment of the money borrowed could be made by the corporate authorities." So I conclude that where a county borrows money without authority of law, but for a legitimate purpose and uses and applies the proceeds of the loan for that purpose, the County may be required to repay the loan with interest thereon.

The County Treasurer ,before paying warrants drawn on him for the repayment of such a loan, must satisfy himself that the loan was so used by the County. Repayment of any part of a loan not so used could not be enforced by the creditor, and if the Treasurer makes payment voluntarily, the burden is on him to sustain the validity of the warrant along the lines I have suggested.

2nd. In scire facias cases "where bail are discharged" judgment for cost may be rendered against the County as the unsuccessful party and where judgment is so rendered, the same should be paid out of the general fund of the County.

State vs. Parker, 83 Ala. 265.
State vs. Earnest, 123 Ala. 631.

The officers in whose favor costs accrue in such proceedings are not required to look to the fine and forfeiture fund for the payment of the same; as stated above, judgment may be rendered by the Court against the County for the costs and in that event, the County should pay the same.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Registration of Life Certificate Holder in City Election, Not Required.

May 30th, 1907.

Hon. Gaston Gunter,
Chr. Com. Municipal Corporations,
Montgomery, Alabama.

Dear Sir:—

I have your favor of the 21st instant requesting me to advise you whether the Legislature has the power under sections 181, 183, 184 and 187 of the Constitution of 1901 to compel a person holding a life certificate to register at a city registration to entitle him to vote at a city election. It is my opinion that the Legislature cannot compel such person to register at a city registration to entitle him to vote at a city election.

This is a matter of some doubt and I have reached the above conclusion by construing the expression in section 177 of the Constitution,—"any election by the people,"—to include a city election.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Sixteenth Section Land—When Patent Should Issue.

May 28th, 1907.

Hon. B. B. Comer,
Governor of Alabama,
Capitol.

Dear Sir:—

Some days ago you requested me to advise you whether the State of Alabama should issue its patent deed to parties claiming and holding sixteenth section land when there is no record in the Department of Education that the full purchase money has been paid, and the Superintendent of Education does not make the certificate of such payment as provided by section 3654 of the Code. Section 3653 provides for the issuance of a patent upon satisfactory evidence of full payment

of the purchase money. Section 3654 provides that "Except under the provisions of the preceding section, no patent must issue without the certificate of the Superintendent of Education, that the whole amount of the purchase money specified in the certificate, with all interests thereon, has been paid."

It seems, therefore, from the two sections referred to that it was the intention of the Legislature to permit the issuance of a patent upon evidence of full payment satisfactory to the Secretary of State, and which need not be a certificate of the Superintendent of Education. When no such evidence can be furnished, the patent cannot issue without the certificate provided for in section 3654. Of course, it will be observed that the certificate of the Superintendent of Education may in all cases be taken and considered as satisfactory evidence and patent may issue on the faith of that certificate without further investigation.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Sixteenth Section Lands—When Title Acquired Adversely to State.

May 31st, 1907.

Hon. B. B. Comer,
Governor of Alabama.
Capitol.

Dear Sir:—

I have your letter of of this date requesting me to furnish you my written opinion as to whether or not the State of Alabama should issue a patent to the parties applying therefor in the matter shown on the papers submitted by Col. W. W. Shortridge, and in reply I beg to submit the following:

It appears from the papers submitted to me that John M. McClanahan purchased the south half of section 16, township 24, range 14 east, in Chilton County, on Feb. 3rd, 1854; that he received a certificate of the purchase from the township

trustees, which certificate shows that the purchase price of the land was one hundred and fifteen dollars and ninety cents of which thirty-eight dollars and twenty-five cents was paid in cash and four notes each in the sum of nineteen dollars and forty-one cents, total seventy-seven dollars and sixty-four cents, executed for the balance due and payable 1, 2, 3 and 4 years with interest from date. The records in the office of the Superintendent of Education show that two of the four notes referred to have been paid, but there is no record of the payment of the other two notes of nineteen dollars and forty-one cents each. So that there now appears to be due the State the sum of thirty-eight dollars and eighty-two cents with interest for about fifty years at the rate of $3.00 per annum, total amount of principal and interest being $188.42. From the data furnished me in connection with the matter there is some evidence of the fact that the purchaser paid taxes on the land during this period of time. Mr. Shortridge states in his affidavit that the Tax Book for the year 1858 shows the land duly assessed to Mr. McClanahan. From the tax receipts submitted covering the last ten years, it appears that the tax ranged from about $6.00 to $8.00 per year for that time. There is no evidence of the amount of taxes prior to the time mentioned. Assuming that the State received $3.00 per year during the past fifty years in the way of taxes, the taxes and interest would amount to about the same.

From the evidence submitted, it appears that the lands in question are wild and unfit for cultivation and the only evidence of actual possession is shown from the affidavit of W. P. Martin that one, Morgan Glass, built a cabin on the land and cleared some of it about 25 years ago and lived for several years, seemingly as the tenant of Mr. McClanahan. The fact that taxes have been paid on the land for 50 years is evidence to be considered on the question of adverse possession. But even that fact and the building of the cabin on the land and clearing some of it as shown by witness Martin did not, without more, constitute possession sufficient to give the present claimants adverse title.

Reddock vs. Long, 124 Ala. 260-267.
Wiggins v. Kirby, 10 Ala. 262.
Jackson Lumber Co. vs. McCreary, 137 Ala. 278.
Bynum vs. Hewlett, 137 Ala. 333.

If the claimants could produce such evidence as would constitute adverse possession by them during the past 20 years, they would have a perfect title as against the State. To have that effect such possession must have been hostile, *actual, visible,* notorious and continuous.

Tennessee etc. vs. Linn, 123 Ala. 112.
Wiggins vs. Kirby, 106 Ala. 262.

Where a purchaser of school lands makes a cash payment and gives notes for deferred payments, the township trustees are required to give him a certificate of purchase which certificate conveys to the purchaser, his heirs and assigns, a conditional estate in fee to become absolute on payment of the purchase money and interest. Code sections 3647 and 3648. This conditional estate reverts to the State in the three cases noted in section 3648, none of which so far as I am informed exist in the present case. Therefore, the title acquired by Mr. McClanahan did not revert to the State. If the two notes are now unpaid, the only remedy the State would have would be to file a bill in equity to enforce its vendor's lien. This, of course, would be of doubtful success because the State would be charged with laches, more than fifty years having elapsed since the last note became due; and for the further reason that the statute provides certain remedies which the State may pursue to the end of collecting the purchase money notes, which may in effect be a waiver of the lien of the State which the vendor might otherwise have for the unpaid purchase money.

Considering the case from every standpoint, it would seem that the State's rights in the premises are doubtful, and if a reasonable settlement can be made with the interested parties, it would be to the interest of the State to do so.

There is no duty upon the State to issue a patent except upon satisfactory evidence of full payment of the purchase money or a certificate of the Superintendent of Education of such payment as I advised you in my letter dated May 28th, 1907. The fact that parties may have acquired title by adverse possession, good as against the State, does not entitle them to patent as a matter of law unless it is further shown satisfactorily that the purchase money has been paid.

I have considered this matter at some length because of the frequency with which like questions are presented.

I herewith return all of the papers handed me by Col. Shortridge in connection with this matter.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Mileage to Legislative Committee for Attendance Upon Adjourned Session of Committee— Authority for Payment.

June 8th, 1907.

Hon. Wm. W. Brandon,
State Auditor,
Capitol.

Dear Sir:—

In response to your verbal request to advise you regarding the payment of mileage to the members of the Fertilizer and Cotton Seed Oil Mill Investigating Committee for attendance upon the adjourned or called session of this Committee held in the city of Montgomery June 4th, to the 8th inclusive, I beg to advise you as follows:

Senate Joint Resolution No. 42, page 346 printed pamphlet of the General Laws, provides that this Committee shall have authority to sit during any recess of this Legislature and shall have power to summons witnesses before it and shall make a general investigation of the sale of guano and fertilizer tags and etc. The resolution also provides that this Committee shall receive $4.00 per day while in actual service and shall be paid mileage as members of the Legislature are paid, and are to be paid in the same way and manner as the members of the Legislature are paid.

It is my opinion that under the terms of the joint resolution raising this Comimttee, assigning to it duties and conferring certain powers upon it and authorizing it to sit during any recess of this Legislature, that it has the right to adjourn and meet again as the duties assigned to it under said resolution

and the proper dispatch of the business before it may require and the members of said Committee are entitled to be paid mileage for attendance upon such adjourned meetings in the same manner as members of the Legislature are entitled to be paid mileage for attendance upon adjourned session of that body.

I remain,

Very respectfully,
ALEX. M. GARBER,
Attorney General.

When License Money Refunded Under 4135 Code of 1896.

June 8th, 1907.

Hon. Wm. W. Brandon,
State Auditor,
Capitol.

Dear Sir:—

Replying to a verbal request from your Department to submit a written opinion in the matter of the petition of the town of Georgiana requesting the reimbursement or the refunding to it of a part of the sum paid by it as a license for the operation of a dispensary for the year 1906, and under which license business was discontinued on April 17th, 1906, I beg to advise you as follows:

It appears from the petition that the Act under which the town maintained a dispensary was declared by the Supreme Court to be unconstitutional and, therefore, it afforded no protection or authority to the town for engaging in that business. The town and the officers or persons engaged in the operation of a dispensary were subject to prosecution for the illegal sale of liquor in Georgiana.

Brame vs. State, 38 Sou. 1031.
Russell vs. State, 77 Ala. 89.

The only provision under the law for refunding license money is contained in Section 4135, Code 1896, page 1146, where a person has taken out and paid for license to carry on

a business, and is afterwards prohibited by law from carrying on such business before the time named in the license expires. It is clear that the petitioner, the town of Georgiana, cannot invoke this Section as a means of relief, for what seems to be an equitable case, for the obvious reason that there was in fact a law prohibiting the town from doing this business when the town began such business and there was no law afterwards enacted or made which prohibited it.

Therefore, I feel constrained to advise you against the payment of this claim. Relief must be sought through some other source if secured at all. I remain,

Very respectfully,
ALEX. M. GARBER,
Attorney General.

Importation of Agricultural Products Prohibited.

June 13th, 1907.

Hon. J. A. Wilkinson, Commissioner,
Department of Agriculture and Ind.,
Capitol.

Dear Sir:—

I have your favor of the 3rd instant requesting me to advise you whether there is any law which will allow the Commissioner of Agriculture or Horticultural Board, of which the Commissioner is Chairman, to prohibit the importation into this state of Texas oats infested with the "Green Bug."

The Act of March 7th, 1903 (General Acts 1903, page 140) is entitled, "An Act to further protect horticulture, fruit growing and truck gardening, and to exclude crop pests of all kinds in the State of Alabama." Section 1 of the Act creates a State Board of Horticulture, of which the Commissioner is Chairman. Section 9 provides that "The Board shall have the power also to adopt rules and regulations, not inconsistent with the laws and Constitution of this State and the United States, for preventing the introduction of dangerously injurious crop pests of all kinds from without the State, or regard-

ing the dissemination of crop pests within the State and for the governing of common carriers in transporting plants liable, to harbor such pests, to and from and within the State, and such regulations shall have the force of laws."

If the Board of Horticulture determines that the "Green Bug" is a dangerously injurious crop pest, Texas oats infested with such "Green Bug" may be excluded from the state. This section of the statute gives the Board ample power to adopt rules and regulations to that end. I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Tax Abstract—When Contract Complies With Statute—Compensation for Making.

June 14th, 1907.

Hon. W. W. Brandon,
State Auditor,
Capitol.

Dear Sir:—

I have your favor of the 7th instant enclosing letter from the North Alabama Abstract Company to you, also copy of the contract made by that Company with the Board of County Commissioners of Colbert County under the Act of February 28th, 1901 (General Acts 1900-1, page 1844). You desire to know whether this contract is in compliance with said Act.

The contract seems to be in substantial compliance with the Act except for the provision on page 4 that the Abstract Company shall be paid a sum of money equal to the escaped State and County taxes, with the interest thereon, collected on the lands so shown on the list referred to 'and shown to have escaped taxation for five years or any one or more of the five years above enumerated, viz., 1902, 1903, 1904, 1905 and 1906, and on the lands so shown to have escaped assessment for the taxes of said year 1902, 1903, 1904, 1905 and 1906 or any one or more of said years." At the conclusion of section 1 it is provided that the maps or plat shall show "all lands

which have escaped State and County taxation for the next preceding five years, inc." Section 2 provides for the payment of such compensation as may be agreed upon "not exceeding an amount equal to the State and County tax on the lands so shown to have escaped taxation for five years." Clearly the Act limits the compensation to the amount of such taxes on lands which have escaped taxation for five consecutive years and cannot include taxes which escaped during any number of years less than five. The parties, in the contract under consideration, have undertaken to provide a different compensaiton. There is no authority under the statute for the payment of taxes which escaped for any one or more of the years mentioned less than five.

Nor do I understand clearly the meaning of the clause of the contract quoted above in this; that it is only the amount of the State and County taxes on the lands so shown to have escaped taxation for five years that in any event can be paid, and yet the contract not only includes such escaped taxation for five years or any one or more of the five years enumerated, but also taxes on the lands which have escaped assessment for the same time. It would seem, therefore, there is an effort on the part of the Abstract Company to require a double compensation for the same service. Or at any rate to provide for an additional compensation than the statute authorizes. I, therefore, advise you not to approve the contract. The statute is plain enough, and it would seem that the parties could with little trouble prepare a contract which would comply with the law.

Nor do I find any provision in the statute for the payment of interest on the escaped taxes for which this contract provides.

I have a letter from Hon. Oscar G. Simpson, Probate Judge of Colbert County, on the subject of this letter. I suggest that you send him a copy of the letter I am writing you.

I herewith return papers handed me in connection with the matter. I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Mobile Union Passenger Depot—Authority of Railroad Commission to Require Railroad Companies to Enter.

June 13th, 1907.

Hon. Charles Henderson, President,
Railroad Commission of Alabama,
Capitol.

Dear Sir:

I have your favor of the 3rd instant requesting me to advise you what authority the Commission has to require the Louisville & Nashville Railroad along with other roads, to enter a joint passenger station at Mobile, Alabama.

I advise you as follows:

Under the Act of Sept. 5th, 1903 (Local Acts 1903, page 771) Railroad Companies whose tracks entered the city of Mobile were required to provide for the location and construction of an Union passenger depot in that city. In the event any or all of said railroad companies fail or refuse to agree upon the location or plans for the construction of said depot, Section 4 of the Act provides that "the Railroad Commissioners of Alabama shall have power and authority to and must make an order providing for the exact location, style, character, and size of the building to be constructed and require said railroad companies to comply with the terms thereof." The act provides penalties for the failure, refusal or neglect of the railroad companies to comply with the provisions of the Act, or any order of the Commission made pursuant to its provisions. It would seem, therefore, that the authority of the Commission in the premises is ample under this Act. Aside from this statute I find provisions on this subject in several of the Acts of the last Legislature which of themselves and independently of the Act of September 5th, 1903, confer power and authority upon the Commission to require the Louisville & Nashville Railroad Company to enter such joint passenger station.

Senate Bill 44 entitled "An Act to create a railroad commission to be known as the Railroad Commission of Alabama, define its duties and powers and provide for its mode of procedure and prescribe penalties for violation of its orders, approved Feb. 23rd, 1907, provides in section 14 that "The Railroad Commission shall have power and authority subject

at all times to the control of the Legislature, or regulating railroad freight and pasenger tariffs, the locating and building of passenger and freight depots, correction of abuses, preventing unjust discrimination and extortion, and requiring reasonable and just rates of freight and passenger tariffs." This section it seems has to do only with locating and building of passenger and freight depots and does not in terms give authority to the Commission to require the building of a joint depot.

Under Senate Bill 43 entitled "An Act to regulate railroads and other common carriers in this State; to secure reasonable rates and adequate service, and prevent unjust discrimination in their public service, and prescribe penalties for violation thereof," approved Feb. 23rd, 1907, is more liberal in its grant of power and authority for this purpose. Sections 15, 19 and 22 deal with the question and under section 22 the authority of the Commission to require any two or more railroads which enter a city or town to maintain one common, or union passenger depot is very clear.

Section 31 of the Act provides penalties for the refusal "to obey any lawful requirement or order of the Railroad Commission, for which a penalty has not been provided," etc. The failure of a Railroad company to comply with an order such as is herein considered, subjects it to this penalty as there seems to be no penalty otherwise provided therefor.

Since writing the foregoing, I am informed by Mr. Virgil Griffin, the former Secretary of the Railroad Commission, that under the Act of September 5th, 1903, the railroads entering Mobile failing to agree upon the location of a depot, the Commission exercised the power given it in Section 4 of the Act and made an order providing for the location, etc., of the depot to be constructed, and the Southern Railroad Company undertook to build the depot, and the same is nearing completion. All the railroads entering that city, I am informed, agreed to enter this depot under the regulations of the Commission, except the Louisville & Nashville Railroad Company. I think there is ample authority in the statutes referred to in this letter for the Commission to require that Railroad Company to enter the union depot referred to.

I remain,

Yours very truly,

ALEX. M. GARBER,

Attorney General.

When County Solicitor Entitled to Division of Fee Under Section 4561 Code of 1896.

June 18th, 1907.

Hon. Wm. W. Brandon,
State Auditor,
Capitol.

Dear Sir:—

Several days ago you handed me a letter from Mr. Walter A. Brown, Clerk of the Circuit Court, Houston County, in which he requests you to advise him whether he should pay the County Solicitor one half of the fee of $15.00 collected in a criminal case which was begun in the County Court where the defendant was there convicted and from which judgment of conviction he appealed to the Circuit Court and was again convicted.

Section 4561 of the Criminal Code of 1896, page 226, provides that "Solicitors shall only receive one fee in cases that are convicted in the County Court, and the defendant appeals to the Circuit or City Court, and is again convicted on the same charge, such fee to be equally divided between the Solicitor for the County and the Circuit or City Court." If the case referred to by Mr. Brown falls within the terms of the above provision, to-wit: If the defendant was convicted on the same charge in the County Court and the Circuit Court, the County Solicitor is entitled to a division of the fee.

I herewith return Mr. Brown's letter to you.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Purchase Money Note Not Subject to Recording Tax.

June 18th, 1907.

Hon. Wm. W. Brandon,
State Auditor,
Capitol.

Dear Sir:—

On the 6th instant you requested me to advise you on the question raised in the communication from Hon. H. S. D. Mallory of Selma, Alabama, to you.

Colonel Mallory asks the following question:

Where a deed is executed conveying land and the purchaser gives a note for the purchase money, the note reciting that it is for such purchase money and that a vendor's lien is retained therefor, and no mortgage, deed of trust, contract of conditional sale or bond for title is given, can such note be recorded and the mortgage tax paid thereon in lieu of all other taxes under subdivision 7 of section 3911 as amended by the Act of March 7th, 1907 (Pamphlet, Acts 1907, page 403)?

Subdivision A of said subdivision 7 provides, "That no mortgage, deed of trust, contract of conditional sale or other instrument in the nature of a mortgage which is given to secure the payment of any debt which such mortgage, deed of trust, contract of conditional sale or other instrument of like character shall be executed or any interest in real property or personal property which is situated within this State, shall be received for record unless the following privilege taxes shall have been paid upon such instrument before the same shall be offered for record." It is further provided in subdivision B that "the tax herein provided for shall be paid upon all contracts for the sale of real or personal property whether the same be in the nature of a conditional sale of a bond for title and no such contract shall be received for record until such tax shall have been paid."

A note of the character mentioned above is not in terms included in the language of this statute. Clearly it is not a mortgage, deed of trust or contract of conditional sale or bond for title. Nor do I think it is included in the term "or other instrument in the nature of a mortgage." While a vendor's lien has in equity some of the properties of a mortgage, yet in its ordinary acceptation it is not considered as an instrument in the nature of a mortgage.

There is an additional reason why this note is not included within the several classes of instruments which are required to pay this license tax. It would seem that it was the purpose of the law in question to require the payment of the tax on all instruments of the several classes therein mentioned which are required by law to be recorded, and the recording of which operates as notice of the contents thereof. A note of the

character under consideration is not an instrument which is authorized by section 991 of the Code to be recorded.

See Sheridan vs. Shempf, 120 Ala. 475-479.

I herewith return Colonel Mallory's letter to you.

Yours very truly,
ALEX. M. GARBER.
Attorney General.

Deed to Surface Rights Only Not Sufficient Under Rural School House Act.

June 20th, 1907.

Hon. Harry C. Gunnels,
State Superintendent of Education,
Capitol.

Dear Sir:—

I have your favor of the 10th instant requesting me to advise you whether under the Act of March 2nd, 1907 (Pamphlet Acts 1907, page 174) you should accept a deed for school house purposes to surface rights only.

Section three of this Act provides, that "no money shall be appropriated for the erection of a new school building on a plat of ground of less dimensions than two acres." Section four imposes certain duties on the County Superintendent of Education with reference to the collection of the fund with which the school house is erected or repaired and provides that, "Whenever it shall be shown to the satisfaction of the County Superintendent of Education * * * that a deed has been properly executed conveying to the State of Alabama for the benefit of said district the lot or parcel of land on which said public school house is being erected or repaired, and after such deed is delivered to and accepted by him," the money named shall be used as therein directed. The act does not in terms require the lot or parcel of land to be conveyed in fee simple. The following quotation is contained in 18 A. & E. Enc. of Law, Sec. Ed. 140. "In law, 'land' signifies any ground forming part of the earth's surface which can be held

as individual property, whether soil or rock, or water-covered, and everything annexed to it, whether by nature, as trees, water, etc., or by the hand of man, as buildings, fences, etc. The word when used in a deed includes not only the naked earth, but everything within it, and the buildings, trees, fixtures, fences, stones, minerals, waters, and herbage upon it."

As the word land is used here, the conclusion cannot be escaped that anything less than a deed to the land in the fullest sense will not comply with the law. It is at once apparent that a deed to surface rights only is not a deed to a lot or plat of "land" as the word "land" is used in law.

As the Act is silent on this question, my conclusion is reached as a matter of construction. If by following this opinion hardship will be worked as indicated in your letter, I suggest that you have the Act amended as you may think best.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Tax Abstract—When Contract Complies With Statute—Compensation for Making.

June 13th, 1907.

Hon. Wm. W. Brandon,
State Auditor,
Capitol.

Dear Sir:—

I have your favor of the 8th instant enclosing copy of the contract between J. K. Brockman & Co. and the Court of County Commissioners of Cleburne County made under the Act approved Feb. 28th, 1901, (Acts 1900-1, page 1844) and also a statement of certain land sales made by the State. You request me to advise you, "as to what amount of said sales, under authority of the Act herein referred to, that the State should pay to the Court of County Commissioners of said County. The lands sold were lands assessed under the con-

tract with Brockman & Co., under said Act, the question being whether under Section 4104 of the Code the State taxes received by the State under the sale made by the Auditor are or not due Cleburne County under said contract with said Brockman & Co."

On the 28th of May, 1907, I gave you my opinion in the matter of the claim of Brockman & Co. which I think answers the question you have asked me. I can only repeat what is there said:

> "It is very clear from this Act that you are not authorized to draw your warrant for any amount in favor of Brockman & Co. They must look to the Court of County Commissioners of Cleburne County or to the Tax Collector,—it being immaterial now to determine which,—for their compensation. It was never contemplated by the Act that for such services the State should pay, but the contractors must look alone to the provisions of section 2 of the Act referred to or to the Court of County Commissioners if that body makes a different contract."

The question under consideration in said letter was whether you should draw your warrant in favor of Brockman & Co. for a certain amount. I advised you that you could not do so and it is equally clear that there is no authority for making any payment of the Court of County Commissioners of Cleburne, or to the Tax Collector of Cleburne County on account of funds received by the State of Alabama as proceeds of sales of land by the State, although the lands sold may have been lands which escaped taxation for five years and were sold for taxes and purchased by the State at tax sale. The amount owing by the State in the case of a contract of the character under discussion is clearly fixed by section 2 of the Act of Feb. 28th, 1901. The language used in section two of said Act is as follows: "And the amount owing by the State under such contracts shall be paid by the Tax Collector of the County out of the taxes collected by him on lands shown to have escaped as reported to him in the manner now provided by law," etc. The Act does not provide for the contingency presented in this case where the Tax Collector fails to collect the taxes and the lands are sold at tax sale and purchased by the State.

It, therefore, follows that in the present case there is no authority in the Act referred to, as stated above, to pay to the Court of County Commissioners of Cleburne County any amount of money on account of land sold for taxes and bid in by the State and afterwards sold by the State; and under section 4104 of the Code you can only pay to the Judge of Probate of Cleburne County the County and School taxes and fees and costs due to different officers of the County. The State taxes due under such sale cannot be paid under authority of that section to Cleburne County under the contract above referred to, with Brockman & Company.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Record Mortgage Tax—Payable Upon Two Mortgages When Given to Secure Same Indebtness.

(Unofficical.)

June 22nd, 1907.

Hon. G. H. **Malone,**
Dothan, **Alabama.**

My Dear Sir:—

I am in receipt this morning of your favor of June 21st, enclosing copy of your letter of same date to Judge P. C. Black of Geneva, Alabama.

What is commonly called "the mortgage tax" is not an ad valorem tax. It is a privilege tax required to be paid upon every mortgage, deed of trust, contract of conditional sale, or other instrument in the nature of a mortgage, for the right to have such instrument duly recorded. The language of the statute is "That no mortgage, deed of trust, contract of conditional sale, or other instrument in the nature of a mortgage * * * shall be received for record unless the following privilege taxes shall have been paid upon such instrument before the same shall be offered for record," etc. I think the statute contemplates that this tax shall be paid upon each instrument

filed for record. From the language employed, I do not see how we can escape the conclusion that this construction applies, although two mortgages may be given to secure the same indebtedness. The statute further provides that when such instrument has been admitted to record in any County and the tax paid thereon, it can be recorded in any other County without the payment of any tax except the recording fee of the Judge of Probate.

In the above I have proceeded upon the theory that "both papers" mentioned in your letter are mortgages or instruments in the nature of a mortgage and such instruments as are authorized to be recorded under the law.

I remain,

Yours very truly,
ALEXANDER M. GARBER,
Attorney General.

Insurance Advisory Board Contracts—Validity of.

Montgomery, June 28th, 1907.

Hon. Frank N. Julian,
Insurance Commissioner,
Capitol.

Dear Sir:—

A communication was recently addressed to me from your department by Hon. A. C. Sexton, Deputy Insurance Commissioner, in which you requested me to advise you whether section 2602 of the Code prohibited the issuance by Insurance Companies of Advisory Board Contracts or contracts of a similar nature in connection with life insurance.

After a careful consideration of the matter, I entertain serious doubt as to the legality of such contracts and in view of the importance of the question and the interests involved, I feel constrained to advise that such plan of doing business on the part of any insurance company should not be approved by you until after the legality of the same has been sustained by the Courts. I deem it unnecessary to set forth in detail the reasons that lead me to this conclusion; suffice to say that on

more than one ground it is evident that such contracts may conflict with the intent and spirit of the section of the Code referred to and the public policy sought to be established by that section. The scheme has, moreover, many features of preference and inequality aside from its discriminatory nature.

Very respectfully,
ALEX. M. GARBER,
Attorney General.

Expense of Farmer's Institutes—What Fund Payable From.

July 2nd, 1907.

Hon. J. A. Wilkerson,
Commissioner of Agriculture and Industries,
Capitol.

Dear Sir:—

I have your favor of the 27th ultimo requesting me to advise you whether under sections 416 and 417 of the Code construed with reference to section 397 "the expenses of the Farmers' institute as well as the expenses of the office will all come from the $500.00 per month or can the Commissioner of Agriculture and Industries spend $3,000 in addition to the $500.00 under Section 417 out of any moneys to the credit of the Department in the Treasury."

Section 416 authorizes the Commissioner to hold in different sections of the State Farmers' Institutes and section 417 provides that:

> "The Commissioner is authorized to pay the necessary expenses incurred in conducting such Farmer's Institutes, including the expense of employing lecturers when necessary and for distributing the reports thereof; and for this purpose there is annually appropriated out of the funds of the Department of Agriculture, $3,000.00 or so much thereof as may be necessary to be paid from the monthly estimate and allowance for expenses of the Department."

Section 397 provides for the monthly estimate and allowance for the expenses of your Department.

You may retain for such expenses, with the approval of the Governor, an amount not exceeding $500.00 per month. It is my opinion that the last clause of section 417, "to be paid from the monthly estimate and allowance for expenses of the Department," limits the appropriation therein made to the monthly estimate and allowance provided for in Section 397; and, therefore, the expenses of such Institutes must be paid from that fund and the $3,000.00 appropriated for that purpose is not in addition to the $500.00 which the Commissioner may retain under Section 417.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

License Tax for Soliciting Orders for Enlargement of Photographs or for picture Frames.

July 3rd, 1907.

The State Tax Commission,
Montgomery, Alabama.

Gentlemen:—

Your favor of May 14th, was duly received requesting me to advise you whether, under the facts shown in the papers enclosed to me, the defendants are liable for the license tax imposed by section 17 of the Act of March 7th, 1907. Section 17 of this Act is as follows:

> "That each person, firm or corporation, either in person or through agents, who solicits orders for the enlargement of photographs or pictures of any character, or for picture frames, whether they make charge for such frames or not; or any person, firm or corporation either in person or through agents who sells or disposes of picture frames shall pay a license tax of twenty-five dollars in each County in which they may do business; but this Act shall not apply to merchants or dealers having a permanent place of business in this State and keeping picture frames as a part or all of their stock in trade."

The agreed statement of facts enclosed in your letter is not signed by either the defendant or the county attorney. It may or may not be correct. I suggest that you take the matter up with the county attorney and ascertain whether he agreed to this statement as being correct. It is indefinite and evasive in several features. If the traveling representative of the Chicago Portrait Company, a corporation under the laws of Illinois, and doing business in that State solicits orders for the enlargement of pictures in this State and in connection therewith, solicits and receives orders for frames, and such orders are forwarded to the Portrait Company in Chicago together with the pictures to be enlarged and framed, and the pictures are returned to this State when enlarged and delivered in the frame ordered in the first instance by the purchaser, the transaction constitutes inter-state commerce. But the practice of this Company and in fact nearly all Companies engaged in this business, is to solicit orders for the enlargement of pictures and at the same time take a conditional order from the customer for a frame and the orders are forwarded to Chicago and returned and the picture delivered, and at the time of the delivery the customer then selects the frame. The transaction so far as it relates to the picture is interstate commerce. But the agent is liable for a tax, for he sells the frame at the time of the delivery and that part of the transaction is not, in my opinion, interstate commerce. The statute provides, "that any person, firm, or corporation either in person or through agents who sells or disposes of picture frames shall pay a license tax of twenty-five dollars," and it is entirely immaterial that the sale of the enlarged picture is interstate commerce and protected by the Federal Constitution.

I return herewith all papers handed to me in reference to this matter.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

License Tax for Soliciting Orders for Selling and Delivering Sewing Machines—When Interstate Commerce.

July 8th, 1907.

Hon. Wm. W. Brandon,
State Auditor,
Capitol.

Dear Sir:—

Several days ago you requested me to advise you concerning the liability of the defendant in the case of the State vs. L. C. Honeysuckle for the payment of the license for selling and delivering sewing machines, required by section 11 of the Act of March 7th, 1907.

According to the defendant's counsel the facts are as follows:

> "Defendant represents a Tennessee owner or manufacturer in soliciting orders for sewing machines in this State. He takes a sample machine in a buggy or wagon and goes from house to house with it, taking orders as he goes. These orders are sent into the Tennessee headquarters and, if approved, machines are shipped into the State to fill them. No other machines are shipped except to fill the individual orders, and defendant, or someone for him, delivers the machines consigned to him to the particular individuals whose orders he holds and to no others. The sample machines are not for sale. The machines are owned in Tennessee and they are sold by the Tennessee party alone."

The contention is that the business thus transacted is interstate commerce and beyond the power of the State to regulate or control. For the purpose of this opinion, the above statement of facts is assumed to be correct.

After considerable investigation of the matter, I am of the opinion that such agent is engaged in interstate commerce and therefore, the statute in question has no application to that agent. Any license or tax imposed upon him by the State is a direct burden on interstate commerce and beyond the power

of the State. My opinion is based upon the following decisions of the Supreme Court of the United States and of the State of Alabama:

Kehrer v. Stewart, 197 Ala. p. 60.
Rearick v. Pennsylvania, 203 U. S. p. 507.
Caldwell v. North Carolina, 187 U. S. p. 620.
Emert v. Missouri, 156 U. S. p. 296.
Brennan v. Titusville, 153 U. S. p. 289.
State v. Agree, 83 Ala. p. 110.
Ex Parte Murray, 93 Ala. p. 78.
Stratford v. City Council, 110 Ala. p. 619.

If, however, this business should be transacted by the agent in either of the following ways he would be liable for the license tax above referred:

(a) If the agent of the non-resident principal should, in pursuance of his employment, go from place to place in Alabama soliciting orders for sewing machines, and delivering the same at the time of taking the order.

(b) If such agent should in pursuance of such employment solicit such orders and later fill orders thus obtained by delivering a machine which at the time the order was taken in this State; or if not in this State at that time, but shipped later for the general purposes of the business and not expressly to fill an order previously taken.

It will be your duty to satisfy yourself of the correctness of the facts submitted to you by Honeysuckle through his counsel. I herewith return all the papers handed me in connection with the matter.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Supreme Court Costs Where Appeal Dismissed on Account of Escape of Defendant.

July 8th, 1907.

Hon. R. F. Ligon,
Clerk Supreme Court,
Capitol.

Dear Sir:

I have your favor of the 24th ultimo requesting me to advise you whether under Section 4513 of the Criminal Code of 1896 the Auditor is authorized to draw a warrant on the Treasurer in your favor for the costs of the Supreme Court, not to exceed $15.00, in a criminal case when the defendant is convicted of a felony and sentenced to imprisonment in the penitentiary, and the appeal of the cause is dismissed, the defendant having escaped from custody.

In my opinion the Auditor is authorized to draw the warrant for the amount named under those facts. It is immaterial that the appeal was dismissed because the defendant escaped from custody.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

License Tax on Foreign Fraternal Insurance Orders—Liability for.

July 9th, 1907.

Hon. Frank N. Julian,
Secretary of State,
Capitol.

Dear Sir:—

I am in receipt of your favor of July 5th, enclosing letter of Mr. T. Gardner Foster containing an inquiry as to the liability, for the license tax imposed by S. B. 86, of Fraternal Orders which are foreign corporations, and transact a co-operative insurance business in the State of Alabama. The language

of the Statute is that "after the first day of July, 1907, each foreign corporation, or non-resident corporation or corporation organized under or by authority of the laws of any State or government other than the State of Alabama, shall be required to procure from the Secretary of State a license authorizing the doing of business in the State of Alabama by such corporation."

Under the terms of this Statute, it is my opinion that Fraternal Orders which are foreign corporations or non-resident corporations are liable for the license tax under S. B. 86. The Statute imposes this license upon every corporation and it is immaterial that the corporation may be of a fraternal nature.

I herewith return letter of Mr. Foster.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Issuing New Patent—Fee Not Required for.

July 31st, 1907.

Hon. Frank N. Julian,
Secretary of State,
Montgomery, Alabama.

Dear Sir:—

I have your favor of the 26th instant. You refer to section 3653 of the Code, which provides that upon the proof of a mistake in the issuance of a patent, the Secretary of State must correct the same or issue a new patent on the return of the original to his office; and you also refer to Section 1977 of the Code which provides that the Secretary of State must charge a fee of $1.00 for the issuance of a patent and the annexation of the Seal of State.

You desire to know whether you are required to charge the fee of $1.00 for issuing a new patent to correct an erroneous patent. It is my opinion, and I so advise you, that you are not required to charge the fee of $1.00 under the circumstances stated above, nor would you have any authority to require the payment of the fee where the patentee paid the fee required on the issuance of the first patent.

I herewith return the papers handed me in connection with the matter.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Epileptic Colony Bill—Appropriation—What Constitutes.

August 9th, 1907.

Hon. B. B. Comer,
Governor of Alabama,
Capitol.

Dear Sir:—

Complying with your verbal request for my opinion as to whether section 17 of Senate Bill No. 61 (The Epileptic Colony Bill) make an appropriation for the annual expenses incurred under the bill, I beg to advise you as follows:

Section 17 of the Act provides that, "For the purpose of meeting any expenses incurred under the provisions of this Act there shall be set aside from any moneys in the Treasury of Alabama not otherwise appropriated, the sum of $20,000; and there shall be raised by taxation from year to year the sum of $10,000 to meet the annual expenses incurred in operating said colony after the same shall have been opened to receive patients, as provided in section 7 of this Act."

Section 72 of the Constitution provides that "No moneys shall be paid out of the Treasury except upon appropriations made by law and on warrant drawn by the proper officer in pursuance thereof."

An appropriation is defined to be "An authority from the Legislature given at the proper time and in legal form to the proper officers to apply sums of money out of that which may be in the Treasury in a given year to specified objects or demands against the State." (3 Cyc. 565.) Do the provisions of the Act under consideration constitute an appropriation, for the purpose designated, within the meaning of this constitutional provision, and did the Legislature so intend? Un-

der Constitutions such as ours, an appropriation for the purpose is indispensable to authorize an Executive officer to make a payment, no matter how great the moral or legal obligation may be on the part of the State to make such payment. There are many decisions of the Courts construing similar provisions.

It will be noted that the Act provides that, "there shall be raised by taxation from year to year the sum of $10,000 to cover the annual expenses," incurred in operating the colony. How this fund is to be raised by taxation is not suggested in the Act. It is, of course, well known that the Constitutional limit of sixty-five mills is now imposed, and there can be no additional State tax exacted. It is hardly to be supposed that the author of the law intended to lay an annual specific tax upon the people by which this sum should be raised. So that it was evidently the intention to make an annual appropriation out of the funds raised by the present method of taxation. But the language used is not, in my opinion, sufficient to warrant the Executive officers in paying out State funds. It amounts to more than the statement that $10,000 shall be raised by taxation from year to year to pay the annual expenses. It does not provide for the payment of the sum so raised to any person or official nor is there anything in the bill to impose any duty upon the State Auditor to issue his warrant upon the Treasurer for $10,000 annually, nor is there any duty imposed upon the Treasurer to pay such warrant.

The Supreme Court of Alabama has never construed section 72 of the Constitution with the view of determining what language may constitute an appropriation. Similar Constitutional provisions have been considered with that view by many of the Courts of the country. The subject is well discussed in the following cases, which support my conclusions:

State v. Moore, 56 Nebraska 88, 61 Am. St. Rep. 538.
Carr v. State, 127 Indiana 204, 22 Am. St. Rep. 624 (and notes.))
Ingram v. Colgan, 10 California 113, 46 Am. St. Rep.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Contracts of Conditional Sale Not Subject to Record Tax Under Revenue Act of 1903—Taxable Under Revenue Act of 1907.

August 17th, 1907.

Judge John Purifoy,
Examiner of Public Accounts,
Athens, Alabama.

Dear Sir:—

I am in receipt of your letter of August 15th, enclosing copy of two instruments recorded in Limestone County and on which no record tax has been collected; and in reply to your request to advise you whether such instruments are "taxable," that is liable for the record mortgage tax, I beg to say, that the revenue act, approved March 5th, 1903, did not embrace instruments of this character. These notes are contracts of conditional sales. I do not think they could be termed instruments in the nature of a mortgage. I furthermore find that my predecessor held the same views concerning instruments of this character as expressed by me herein.

I desire to call your attention, however, to the amendment of this statute by the present Legislature. The Revenue Act, approved March 7th, 1907, adds the following words which were not contained in the Act of 1903, "contract of conditional sale," so that the law now reads, "that no mortgage, deed of trust, *contract of conditional* sale or other instrument in the nature of a mortgage." * * * Hence, under the present law instruments like the notes enclosed in your letter are now liable for the record tax. It might be well for you to so advise Judge Malone.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Piano Dealer—Liability for License Tax.

August 22, 1907.

Hon. W. W. Brandon,
State Auditor,
Capitol.

Dear Sir:—

Several days ago you referred to me a letter from the E. E. Forbes Piano Company addressed to Hon. M. F. Brooks, Judge of Probate of Escambia County, concerning the license tax required of piano dealers, and you desire to be advised whether the dealer referred to in the letter of Forbes Piano Company is subject to such license tax. Section 11 1-2 of the Act of March 7, 1907, (Laws of 1907, p. 415) provides that, "each person, firm or corporation engaged in the business of selling or delivering pianos or organs in this State, either in person or by agent, or consignee, shall pay an annual license of $100 for each County in which they may so sell," etc. The Forbes Company states that the Clutter Music House of Pensacola, Florida, shipped a piano from the State of Florida and there sold it to one Lamont, without having the license required by this Act. If the piano was shipped into this State by a non-resident dealer in response to an order previously given, the State could not exact the license of such dealer. But if the instrument was shipped into this State not in response to a previous order and on its arrival here was sold by the non-resident dealer, such non-resident dealer would be subject to this license tax.

It is the duty of the Tax officers of the State to investigate and satisfy themselves of the facts concerning the transaction. I herewith return the letter of the Forbes Company referred to and also the letter of Judge Brooks requesting you to advise him in the premises.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Money Lending Corporation—Method for Ascertaining Liability for Annual Franchise Tax—License Tax on.

August 24th, 1907.

Hon. Wm. W. Brandon,
State Auditor,
Capitol.

Dear Sir:—

Several days ago you referred to me the letter of Hon. S. E. Greene, Judge of Probate of Jefferson County, to you of date Aug. 13th, requesting me to advise you on the questions raised by Judge Greene.

The first question presented is this: Where the actual amount of capital employed in this State by foreign corporations within the meaning of the Act approved March 7th, 1907, H. B. 611, (General Acts 1907, p. 521) is $500,000 and the aggregate amount of loans made by such corporations secured by existing mortgage or mortgages on real estate in this State upon which has been paid the recording privilege tax, is $500,000, is such corporation required to pay a privilege tax within the meaning of the Act referred to, and also the Act of July 27th, 1907, entitled "An Act to fix the basis for the ascertainment of annual franchise tax on foreign corporations?" I agree with the opinion of Judge Greene that under the facts stated the corporation would not be required to pay any tax under either of those Acts.

Judge Greene also desires to know whether such foreign corporation would be required to pay the license tax fixed by section 9 of the Act of March 7th, 1907, (Acts of 1907, p. 455). In my opinion such foreign corporations, and in fact every corporation, foreign or domestic, engaged in the business of lending money, is required to pay an annual license of one hundred dollars, regardless of whether or not the franchise tax is paid by such corporation.

Judge Greene further desires to be advised concerning the right of the Probate Judge to require proof of the fact that a foreign money lending corporation has no capital employed in this State except that which is secured by mortgage, etc.

Under subdivision E of section 1 of the Act of March 7th, 1907, H. B. 611, (General Acts 1907, p. 418), the Judge of Probate has the authority to require proof of such facts.

I herewith return Judge Greene's letter.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Construction of the Act Establishing Live Stock Sanitary Board etc., as Amended by Subsequent Act.

August 30th, 1907.

Dr. C. A. Cary,
State Veterinarian,
Auburn, Alabama.

Dear Sir:—

I have your letter of this date requesting me to give you my construction of the Act approved August 6th, 1907, being an amendment to the Act approved March 12th, 1907, entitled "An Act to establish a State Live Stock Sanitary Board and the office of State Veterinarian in order to further protect live stock from contagious and infectious diseases and provide for eradicating and excluding such diseases from Alabama." The amendment referred to adds section 16 of the Act as follows:

> "That none of the provisions of this Act shall apply to or to be put in force in a County where the majority of its area is not under a stock law or a law prohibiting cattle from running at large."

None of the provisions of the Act apply to a County where the majority of its area is under a stock law and the words "stock law" in this connection mean a law prohibiting sheep or hogs or cattle or other animals from running at large and a law which prohibits any one class of stock must be considered in determining whether the majority of the area of the County is under a stock law. The last clause of the section "or law prohibiting cattle from running at large" seems to in-

dicate that the Legislature used the words "stock law" as I have explained above. So that under the whole section where the majority of the area of a County is under a law prohibiting any kind of stock, including cattle, from running at large, such County is subject to the provisions of the Act.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Compensation of State and County Boards of Pension Examiners—Notice of Meeting.

August 30th, 1907.

Hon. Wm. W. Brandon,
State Auditor,
Capitol.

Dear Sir:

You requested me on yesterday to advise you on the questions raised in the letter to you from Mr. E. S. Starr, Chairman of the State Board of Pension Examiners. Mr. Starr, it seems, was advised on the 26th instant, of the passage and approval by the last Legislature of the Act of August 14th, 1907, prescribing rules of evidence in pension cases, etc. Under the terms of section 3 of this Act, the County Boards of Examiners are required to hold special sessions in their respective counties on the first Monday in September, 1907, of which they are required to give three weeks' notice by publication. The Act having been approved on August 14th, eighteen days before the meeting was required to be held, it was for all practical purposes impossible to give this notice, unless the first publication was made on the date of the approval of the Act. Under section 3043 of the Code, where notice is required to be given for three weeks, the first insertion must be at least eighteen days before such date. The provision of the Act requiring notice is directory merely and notice for shorter length of time would comply with the purpose of the statute. In any event, there is but one course for the County Boards to take and that is, for them to meet as required by the Act regardless of the length of time the notice is published or whether any notice at all is published.

You desire to know also what provision is made in the Act of August 14th, 1907, for the payment of the County Boards and the State Board and if no provision is made therein, under what law can they be paid? There is no authority under the Act of August 14th, 1907, for the payment of any fees to the several Boards and for that purpose you must look to Section 10 of the Act of February 10th, 1899, as amended by the Act of March 5, 1901, as follows:

> "That as compensation for services rendered under this act the County Board of Examiners for the year 1899 and 1900 shall receive as follows: In the counties where the applicants number 50 or less, 50 cents each for each application passed upon by them and reported to the State Board. In counties where the number is more than 50 and less than 100, 40 cents each, and in all counties where there are 100 or more applicants they shall receive 30 cents for each applicant. After the year 1900 each member of a county board shall receive $1.00 for each application passed upon. The State Board of Examiners shall receive $4.00 per diem for days spent in the actual discharge of duty together with the actual expense of travel to and from the Capitol for one trip; provided that in no one year said Board be paid for more than fifteen days' service."

As you will observe, each member of the County Board is entitled to receive one dollar for each application passed upon and the State Board of Examiners receive four dollars per diem for days spent in the actual discharge of their duties together with their actual expenses. This provision concerning compensation will cover the services contemplated by the Act of August 14th, 1907.

I herewith return Mr. Starr's letter.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Contracts With Public Printer Cannot Be Impaired by Provisions of Subsequent Act of Legislature.

August 31st, 1907.

Hon. Frank N. Julian,
Secretary of State,
Montgomery, Alabama.

Dear Sir:—

On the 9th of August, 1907, you requested me to advise you whether under section 18 of the Act of July 27th, 1907, entitled "An Act to provide for the publication and distribution of the Code of Alabama and the Acts of the Legislature," the Acts of the Legislature should be printed in accordance with the specifications named in said section 18 or in accordance with the specifications named in the contract now held by the Brown Printing Company of this City.

In August 29th, 1906, a contract was made and entered into between the State of Alabama and the Brown Printing Company for the public printing and binding authorized by Chapter 93 of the Code as amended by the Acts of February 23rd, 1899 (General Acts 1898-9, p. 40) and February 28th, 1901 (Acts 1900-1, p. 1931.) This contract complies in all respects with the public printing laws as they existed prior to the present session of the Legislature. The contract was approved by the Governor, the Auditor and the Treasurer as required by section 3392 of the Code and continues for a period of two years from the first day of October, 1906.

Under Senate Joint Resolution, No. 53, approved March 2nd, 1907, the Secretary of State was authorized to have 2,000 copies of the acts and joint resolutions, except local acts, passed by the first part of the session, printed by the public printer in pamphlet form, and I am informed by you that this resolution was complied with and that the public printer, acting under your directions, printed for the permanent edition of the acts a large number of pamphlets referred to with the view of adding thereto the remainder of the General Acts on the adjournment of the session of the Legislature; and that this printing intended for the permanent edition of the Acts has been done in all respects as required by the contract of Aug. 29th, 1906, between the State and the Brown Printing Company.

Section 18 of the Act of July 27th, 1907, is in the following language:

> "To facilitate the indexing and proper noting of cross references to the Acts of the present session of the Legislature which has been incorporated into the Code, the Secreary of State shall have printed three thousand five hundred copies of the general acts of the present session of the Legislature, to be printed on sixty pound laid book paper, pure rag stock; to be handsewed in sections of sixteen pages on five bands, and to be trimmed to the size of the Supreme Court of Alabama Reports and bound in linen buckram of the same color and quality as that prescribed for the State Edition of the new Code, to be printed on new type of the same style and same measure per line as that used in the Reports of the Supreme Court of Alabama. Whenever the words "Be it further enacted" are at the beginning of any section, they shall be omitted. The pages of the pamphlet containing the general laws which was published by authority of a Joint Resolution number 53, approved March 2nd, 1907, shall be preserved in the new volume as star pages, but in every other respect the type and size of page shall be as required herein, and the general acts passed on and after July 9th, 1907, shall be added to those passed before the recess, and bound in one volume with full index, and must be published within sixty days from the adojurnment of this session of the Legislature."

The specifications required by this section are wholly different from the specifications required in and by the contract of Aug 29th, 1906. If the public printer as matter of law must comply with said section 18 he is put to considerable expense and loss on account of the work already done, for it is evident that that work will be useless in that event.

But the question is not one of convenience or of loss or damage to the State or the public printer, but is one of law, namely: Whether the Legislature may impair the obligation of the contract of August 29th, 1906.

The Legislature, by section 3393 of the Code, reserved the power to declare a contract with the public printer forfeited for the failure or neglect of the contractor to execute the same

faithfully, promptly and skillfully. No effort has been made, nor is there any occasion, so far as I am advised, for declaring the contract of August 29th, 1906, forfeited on the grounds named in section 3393. There being no power reserved by the Legislature to abrogate or change the contract for the public printing except for the cause named in section 3393, I feel constrained to advise you that section 18 of the Act of July 27th, 1907, is invalid in so far as it attempts to require the Acts of the recent Legislature to be printed in a manner different from the specifications fixed by the contract of August 29th, 1906, between the State and the Brown Printing Company, and that the Company named is entitled to print the Acts in accordance with the law as it existed when the contract was made.

I will now proceed to give you the reasons for my opinion:

Section 10 of the Constitution of the United States provides that, No state shall * * * "pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts."

In the case of Fletcher vs. Peck, 6 Cranch 87, Chief Jnstice Marshall laid down this proposition with respect to the right of a succeding Legislature to undo an act authorized by a previously existing law: "When, then, a law is in its nature a contract, when absolute rights have vested under that contract, a repeal of the law cannot divest those rights; and the act of annulling them, if legitimate, is rendered so by a power applicable to the case of every individual in the community."

And the learned Chief Justice discussed the question before the Court at length and concluded that the Legislature of Georgia was without power to rescind or repeal an act under which a Legislative grant of property rights had vested, using this language: "It is then the unanimous opinion of the Court, that, in this case, the estate having passed into the hands of a purchaser for a valuable consideration, without notice, the State of Georgia was restrained, either by general principles, which are common to our free institutions, or by the particular provisions of the Constitution of the United States from passing a law whereby the estate of the plaintiff in the premises so purchased could be constitutionally or legally impaired and rendered null and void."

In the case of the State of New Jersey vs. Wilson, 7 Cranch 164, Chief Justice Marshall speaking with reference to section 10 of the Constitution of the United States said: "In the case of Fletcher vs. Peck, it was decided in this Court on solemn argument and much deliberation, that this provision of the Constitution extends to contracts to which a State is a party as well as to a contract between individuals."

The principle of Fletcher vs. Peck has been followed repeatedly by the Supreme Court of the United States and by practically every Court in the land and is firmly established as a sound proposition. The following Alabama cases support the doctrine:

Slaughter vs. Mobile County, 73 Ala. 134.
State vs. Cobb, 64 Ala. 127, 152.
Commissioners vs. Rather, 48 Ala. 433, 447.
Patton vs. Gilmer, 42 Ala. 548.

And see the numerous cases cited in Vol. 1, of Rose's Notes on U. S. Reports, 399 et seq.; Cooley's Const. Law (7 Ed.) 384 et seq.

The Supreme Court of Kansas had occasion to consider the identical question here raised in the case of State vs. Barker, 4 Kansas 324, 96 Am. Dec. 175. The Court, in holding that an existing contract for the public printing could not be abrogated by subsequent legislation, rested its conclusion on the case of Fletcher vs. Peck, supra.

In the case of Slaughter vs. Mobile County supra, the County of Mobile was authorized by an Act of the Legislature of February 16th, 1867, to contract for certain work in the improvement of the river and harbor of Mobile to an amount not exceeding one million dollars. By the Act of April 9th, 1873, the limit on the contract for that work was reduced to two hundred thousand dollars. In the meantime, however, work had been completed under a contract for such improvements, which ran the total value of the work to more than two hundred thousand dollars. The County refused to pay for the work when completed because the amount already expended had gone beyond the two hundred thousand dollars limit. Judge Stone, delivering the opinion of the Court, said: "When the work was done and accepted under the contract, *if not sooner,*

it was placed beyond the power of the Legislature to impair its obligation. The State Legislatures have no more power to impair the obligation of contracts made pursuant to their authority, than they have to impair those of individuals, made under like conditions."

I appreciate the observation of Chief Justice Marshall in Fletcher vs. Peck, that, "it is not on slight implication and vague conjecture that the Legislature is to be pronounced to have transcended its powers, and the Acts to be considered as void." But it is yet the duty alike of the Courts and of the Attorney General to render such judgment when impelled by duty to do so.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Act Increasing Compensation of Sheriffs for Feeding Prisoners—Validity of.

September 12th, 1907.

Hon. Wm. W. Brandon,
State Auditor,
Montgomery, Alabama.

Dear Sir:—

I am in receipt of your letter of September 3rd, stating that under a recent Act of the Legislature entitled An Act "To regulate the fees of the sheriffs for feeding prisoners confined in jail, etc.," the amounts to be paid to the sheriffs by the State for feeding prisoners when the number of prisoners confined in the jail is less than twenty will necessarily be increased. You request me to advise you in reference to the payment of these increased amounts allowed under the scale adopted by this Act, and also whether or not, in my opinion, this Act is violative of the Constitutional provision contained in section 281 of the Constitution, which prohibits the salary, fee or compensation of any officer holding any civil office of profit in this State from being increased or diminished during the term for which he shall have been elected or appointed.

Section 1 of the Legislative Act under discussion is as follows:

> "Be it enacted by the Legislature of Alabama, that the sheriffs shall receive for feeding prisoners in jail under charge or conviction of any indictable offense, to be paid by the State according to the following scale, viz: When the number of prisoners does not exceed 5 for each prisoner 40 cents per day; when the number of prisoners exceeds 5 and does not exceed 10, for each prisoner 37 1-2 cents per day; when the number of prisoners exceeds 10 and does not exceed 20, for each prisoner 35 cents per day; when the number of prisoners exceeds 20 for each prisoner 30 cents per day."

This section operates as an amendment of one of the items of section 4565 of the Penal Code of 1896, which deals with sheriffs' "fees and *allowances* in criminal cases." The particular fee or allowance affected is that one which entitles sheriffs to 30 cents for each day "for feeding each prisoner in jail under charge or conviction for any indictable offense to be paid by the State."

It is to be observed that neither the term "fee" nor the term "allowance" is used in section 1 of the recent Act above quoted, but this section being in effect an amendment of section 4565 of the Code, it is reasonable to assume that the Legislature intended the increased charges allowed to sheriffs for feeding prisoners to be construed in like manner as the terms used in the Code to designate these charges.

The first question for decision is to determine whether the amounts to be received by the sheriffs for feeding prisoners is a "fee" or an "allowance." It is of no consequence that the title of the Act employs the expression "The fees of sheriffs," no such expression being used in the body of the Act.

Fees are a reward or wages given to one as compensation for his labor and trouble for the execution of his office or profession. So in the case of Harbor Master, etc. vs. Southerland, 47 Ala. 517, the Court held that the meaning of the word "fee" is a recompense allowed by the law to officers for their labor and trouble. On the other hand, the term *allowance* has been frequently distinguished from the term "salary" or "compensation." Mangam vs. Brooklyn, 50 Am. Reports 705. In this case the Court said, "We have yet to discover any em-

ployment of the word *allowance* by lawmakers or others which is the exact equivalent of either the words "salary" or "compensation."

This distinction can also be applied with equal force to the word "fees." The word *allowance* means, according to Webster, "To put upon allowance, to restrain or limit to a certain quantity of provisions or drink."

From the above commonly accepted definitions of the word 'f'ee" and the word "allowance," it is apparent that there is a recognized distinction between the two terms "fees" and "allowance," and that such distinction is clearly made in the use of these terms in section 4565 of the Code above named.

A decision directly in point and clearly conclusive on this question is presented in the case of Feagin vs. Comptroller, 42 Ala. 516. This identical section of the Code was there under consideration by the Court—which was section 4339 of the revised Code of 1867, and the same as 4565 of the present Code. In this case the Court propounds the question, what did the Legislature intend by the use of the word "allowances" in connection with the word "fees?" Judge Judge delivering the opinion of the Court, said:

> "Under the head of 'fees and allowances' to sheriffs in criminal cases, many items are specified in the statutes which we deem it unnecessary to mention in detail. After enumerating them all with particularity, the Code specifies in what manner they shall be collected and paid; and in providing for their collection and payment, certain of them are specified as fees only, viz: "the fees which accrue against defaulting persons, witnesses and bail;" "the fees which accrue on the removal of a convict to the penitentiary;" "the fees for services rendered in each criminal case," etc. but the claims of sheriffs for victualing prisoners are not called fees; they are designated as accounts; and a mode is provided for the proof and payment of "the accounts due to sheriffs which are payable by the State." Thus we have a fair exposition in the act itself of the legislative intent in the use of the phrase "fees and allowances," by which it appears to be reasonably clear and certain that sheriff's accounts for victualing prisoners do not come under the denomination of fees but fall under the head of allowances."

It being thus clearly demonstrated that the increased amounts to be paid to the sheriffs under the recent Act of the Legislature are "allowances" and not "fees," they fall under a special exception contained in section 68 of the Constitution of Alabama, which is as follows:

> "The Legislature shall have no power to grant * * * any extra compensation, fee or allowance to any public officer, servant or employe, agent or contractor, after service shall have been rendered or contract made, nor to increase or decrease the fees and compensation of such officers during their terms of office; * * * provided this section shall not apply to allowances made by Commissioners' Courts or Boards of Revenue to county officers for ex officio services, *nor prevent the Legislature from increasing or diminishing at any time the allowance to Sheriffs or other officers for feeding, transferring or guarding prisoners.*"

I am of opinion, therefore, that said Act is constitutional and valid, and I so advise you.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

In Re Depot on Lee Street in City of Montgomery.

September 24th, 1907.

Messrs. J. T. Walker,
and R. M. Hobbie, et al.,
Montgomery, Alabama.

Dear Sirs:—

I have given careful and thoughtful attention to the petition signed by a considerable number of "property owners of the City of Montgomery," presented to me several days ago by you, in which I am requested to withdraw my name and the name of the State of Alabama from the bill now pending in the City Court of Montgomery for the removal of the freight depot from across Lee street, at a point near the front approach to the Union Passenger Depot. The principal reason assigned, as stated in the petition, is that in your opinion such

removal would not be to the best interest of the City of Montgomery.

While I concede to you and to these gentlemen the right and privilege to place before me your position in the matter of this suit and its probable effect in your opinion upon the business interest of the City of Montgomery, and recognize the corresponding duty on my part to accord to your position the due and proper consideration to which it is entitled at my hands, yet after having so considered your attitude in this matter, I feel constrained to adhere to the views I expressed to you at some length on this subject when it was under discussion in my office on the day you filed the above petition with me.

Several months ago a petition, signed by reputable citizens of Alabama, residents of the City of Montgomery, was submitted to me, requesting me to exercise the power and duty imposed upon me as Attorney General of Alabama in cases of public nuisance and the unlawful obstruction of the public highways and to institute the proper legal proceeding for the removal of this freight depot from the northern terminus of Lee street and for restraining the further maintenance of said obstruction across said street on the grounds that the obstruction of this highway was a public nuisance which greatly inconvenienced all the public who have or might have occasoin to use this street.

I learned the history connected with the erection of this depot and informed myself from a personal inspection in regard to the physical location of this building in the said street with respect to the convenience of the general public. It was made to appear to me by the signers of the petition last named that the rights and interests of the majority of the general public would be subserved by the removal of said obstruction and that the said Lee Street, as an approach to the Union Passenger depot, was nearer and more accessible to approximately seventy-five per centum of the population of the City of Montgomery than the present approach.

In the light of the facts and conditions above mentioned and in view of the precedents recorded in this Department for such action in cases of this character, I reached the conclusion that the petition of these reputable citizens presented a case for the proper and conservative exercise of the power and discretion vested in me as Attorney General, to afford an opportunity to test and try in the Courts of the State the validity of the grounds proposed for relief, upon a judicial hear-

ing and consideration of all the facts and the principles of law applicable to this class of cases. I beg to state that I entertained grave doubt as to whether or not this obstruction of Lee street was being maintained lawfully and it is my opinion that the best interests of the commonwealth of Alabama, as well as the permanent and lasting welfare of the business interests of all the citizens of the City of Montgomery, without regard to any particular class of property owners or non-property owners, will be best preserved and protected by a final, definite and judicial adjudication of this vexed question in the Court of last resort, and that the final outcome, whatever it may be, will be productive generally of good results. I, therefore, conceived it to be my duty and within the power and reasonable exercise of my official discretion to institute this suit in order that the above result might be effected, feeling assured that in an action brought in a high and honorable Court of this State equity, fairness, established principles of law and good conscience would prevail.

If this freight depot is an unlawful obstruction of a public highway, violates the rights of the sovereign power and is a nuisance and inconvenience to the general public of Alabama and likewise to the general public of the City of Montgomery, a component part of Alabama, certainly it will not be seriously contended that even a minority of property owners in a certain district of the City of Montgomery would not have the right to invoke the administration and application of the law under such existing conditions as mentioned above, though done against the protest of a majority of the property owners of the same district of the City of Montgomery.

I beg to remain,

Very respectfully,
ALEX. M. GARBER,
Attorney General.

Note:—The bill in this case, filed by the State of Alabama on relation of the Attorney General on July 23, 1907, in the City Court of Montgomery, against the Louisville & Nashville R. R. Co., seeking to remove the freight depot from the foot of Lee street in the City of Montgomery was dismissed by the lower Court, and the decree was affirmed on appeal by the Supreme Court. The litigation resulted, as was contended, in giving a legally ascertained status to the asserted rights of the respondent, and, in the interest of public welfare, the City of Montgomery has closed negotiations with the Railroad Company for the removal of the depot.

Securities Deposited by Life Insurance Company Should Be Accompanied With Power of Attorney to Treasurer.

September 24, 1907.

Hon. Walter D. Seed,
State Treasurer,
Capitol:

Dear Sir:—

On the 20th instant, you addressed a communication to me concerning the deposit made by the Protective Life Ins. Co. of Birmingham, an Alabama corporation, under sections 2589 and 2599 of the Code. It appears that this Company offers securities of the total value of $100,000.00, consisting of various bonds to the amount of $25,000.00, and the remaining $75.-000.00, consisting of real estate mortgages. You desire to know whether the mortgages should be accompanied by a power of attorney authorizing the State Treasurer to foreclose and sell the same in the event a judgment should be rendered against the company or other contingency should arise requiring resort to that security for the satisfaction of the company's obligations.

The statutes are silent on the point to which you have directed my attention. Section 2589 requires every domestic company "for better protection of the policy holder to keep at all times the sum of one hundred thousand dollars invested in bonds, securities or mortgages on real estate for double the amount loaned, to be certified as safe and worth this amount by the Insurance Commissioner;" and section 2599 requires the Treasurer of the State in his official capacity to take and hold such deposit, and the same may be returned to the company "when he (the Treasurer) shall be satisfied that the securities so asked to be returned are subject to no liability and not required to be longer held by any provision of law or purpose of the original deposit." Construing the sections to which I have referred *in pari materia,* the intention is manifest that the legislative purpose in requiring this deposit to be made was to better enable policy holders to secure the fruits of any judgment that might be recovered against the company or for the better protection of all creditors of the company, to which deposit resort might be had when necessary. And to effect

that purpose, there should be some power conferred upon the State Treasurer to utilize the securities mentioned. Otherwise, there would be serious doubt of whether the deposit was of any substantial benefit to policy holders and creditors. With this view I have prepared a power of attorney which I herewith enclose to be executed by the company named.

I remain.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Section 176 of Municipal Code Act, Directing State Superintendent of Education to Disburse the Proportionate Share of the School Fund of Each Incorporated City to the City Superintendent of Schools—Held Unconstitutional.

September 27th, 1907.

Hon. Harry C. Gunnels,
Superintendent of Education,
Capitol.

Dear Sir:—

On the 5th instant, you addressed a communication to me with which you enclosed a letter from Mr. Arthur F. Harman, Superintendent of the New Decatur Public Schools, New Decatur, Alabama, in which Mr. Harman desires to be advised by you whether the school funds for New Deactur for the year 1907-8, will be paid to him by the County Superintendent of Morgan County or paid over by you direct to Mr. Harman under Section 176 of the Act of August 13th, 1907, known as the Municipal Code.

The title of the Act referred to is as follows:

> "An act to provide for the organization, incorporation, government and regulation of cities and towns and to define the rights, powers, duties, jurisdiction and authority of such cities and towns and of the officers thereof, and to prescribe penalties for violations of the provisions of this Act."

Section 176 of the Act is as follows:

> "Each incorporated city or town, as a special school district or embraced therein shall receive its proportionate share of the public school revenue to be paid over by the State Superintendent of Education direct to the City Superintendent of schools and by him paid over to the Treasurer."

After a very careful consideration of the question, I am of opinion that the provision contained in section 176 directing the State Superintendent of Education to pay over to the City Superintendent of Schools of each incorporated city or town the proportionate share of the public school revenue is not a subject expressed in, covered or suggested by the title of the act; or necessary or proper to the full rounding of an enactment upon the subject which is expressed in the title and is, therefore, obnoxious to the requirement of section 45 of the Constitution that 'each law shall contain but one subject which shall be clearly expressed in its title."

In the case of Bell v. State, 115 Ala. 87, the Court considered an act "to establish a new charter for the City of Huntsville" and held that the provisions of this Act forbidding the prosecution on affidavit before a Justice of the Peace of a person who had already been arraigned before the Mayor for the same act under the City ordinance, was violative of the constitutional provision, to which I have referred. In the course of the opinion, Judge McClellan, speaking for the Court, said:

> "The subject to be contained in a bill may be as broad and comprehensive as the Legislature may choose to make it. It may include innumerable minor subjects, provided all these minor subjects are capable of being so combined as to form only one grand and comprehensive subject; and if the title of the bill, containing this grand and comprehensive subject, is also comprehensive enough to include all these minor subjects as one subject, the bill and all parts thereof will be valid * * *. The grand and comprehensive subject expressed in the title to this act is the charter of the city, the creation of corporate existence and the conferring of corporate powers. Such subject embraces all the minor subjects incident to such corporate

existence and powers; and whatever is necessary to a complete municipal charter, or is embraced in the thought contained in the general expression, is a part of the subject expressed, and authorized by the general expression. * * * But, *to take away from any tribunal, even of the most inferior character, established by general laws and charged with their administration, jurisdiction theretofore conferred to try* offenses against the criminal laws of the State, and to confer it exclusively upon an officer of a municipal corporation, is not to provide for the exercise of any function of municipal life nor to confer any power incident to municipal government nor to follow any suggestion which can be referred to the expressed purpose of establishing a municipal charter."

In the case of Black v. State, 144 Ala. 92, the Court followed the case of Bell v. State, supra, and held that a like provision contained in "an act to amend an act to incorporate the town of Geneva," was unconstitutional.

The following cases support the general principle laid down by Judge McClellan in the Bell case:

Ex rel Gayles, 108 Ala. 514.
Bradley v. State, 99 Ala. 177.
Glenn v. Lynn, 89 Ala. 608.
Mobile v. L. & N. R. R. Co., 124 Ala. 132-142.
The State v. So. Ry. Co., 115 Ala. 250.
Ballantyne v. Wickersham. 75 Ala. 533.
Ex rel Reynolds, 87 Ala. 138.
White v. Boyin, 113 Ala. 170.
Montgomery v. State, 88 Ala. 141.
Sanders v. State, 117 Ala. 543.
Lindsay v. U. S. Asso., 120 Ala. 156.
Covington v. Thompson, 142 Ala. 90, 111-112.

The title of the act in question may for convenience be divided into three divisions:

(a.) To provide for the organization, incorporation, government and regulation of cities and towns;

(b.) To define rights, powers, duties, jurisdiction and authority of such cities and towns and of the officers thereof;

(c.) To prescribe penalties for violations of the provisions of this act.

Applying the principle of these cases to the case in hand, the subject matter of section 176 does not relate to the organization, incorporation, government and regulation of cities and towns; nor is it a right, power, duty or a feature of the jurisdiction and authority of cities and towns and of the officers thereof, and clearly it has no relation to the last division of the title— prescribing penalties for violation of the provisions of this act. In analyzing the question with the title in view, it is apparent that the only phase of the title which gives any sort of support to the provision of section 176 is that part of the title which I have set out as division "b," viz: "To define the rights, powers, duties, jurisdiction and authority of such cities and towns and of the officers thereof." And so far from being a right, power or duty of a city, it imposes on the other hand a duty upon the State Superintendent of Education, and would change the entire system of dealing with a large portion of the public school revenue,—in contravention of existing laws on that subject. It also indirectly affects the compensation to which the County Superintendent of Education is entitled under section 3555 of the Code by relieving him of the duty of distributing so much of the public school revenue as would by the proposed system be paid direct to the City. It does not provide for the exercise of any function of municipal life nor does it confer any power incident to municipal government.

The purpose of section 45 of the Constitution, said Chief Justice Brickell in Lindsay vs. U. S. Association, 120 Ala. 156, is among other things, "to fairly apprise the people, through such publication of legislative proceedings as is usually made of the subjects of legislation that are being considered, in order that they have the opportunity of being heard thereon by petition or otherwise, if they shall so desire." And further in the same case it is held that "the title must be such, at least, as fairly to support or give a clew to the subject dealt with in the act, and, unless it comes up to this standard, it falls below the constitutional requirement."

The subject matter of this section (176) would never be suggested to the legislative mind from reading or hearing read the caption of this bill; nor is it reasonable to say that the general public was fairly apprised from the title of the act, under the

principles above quoted, that a provision was contained therein which directly affected and changed the duty heretofore imposed by law upon the State Superintendent of Education, as well as the duties and emoluments of County Superintendent of Education in sixty-seven counties.

It follows, therefore, that section 176 of the act under consideration falls to the ground, and there is no authority for you to pay to the Superintendent of public schools of New Decatur the school funds for that City.

In order that no misunderstanding may result, I beg to say that the remaining portions of the municipal code are unaffected by this ruling; for it is well settled that where an act is "complete within itself, sensible, capable of being executed and wholly independent of that which is rejected, the enactment will be upheld and enforced as to that which is valid."

Harper vs. State, 109 Ala. 28.

I beg to remain,

Very truly yours,
ALEX. M. GARBER,
Attorney General.

Superintendent of Education of Talladega County—Office Elective—Present Incumbent Holds Office Until Successor Elected.

September 28th, 1907.

Hon. Harry C. Gunnels,
State Superintendent of Education,
Montgomery, Alabama.

Dear Sir:—

Some days ago I received an official communication from you in which you requested me to advise you relative to the office of County Superintendent of Education of Talladega County. You state in your letter that for a number of years the State Superintendent of Education has been appointing, every two years, a County Superintendent of Education for Talladega County and that Mr. John C. Williams, the present

Superintendent of Education of that County, was appointed two years ago for a term expiring September 30th, 1907. You further state that your authority to appoint a successor to the present incumbent has been questioned, and you also enclose for my consideration an opinion on this matter addressed to Mr. John C. Williams by Hon. C. C. Whitson.

The points upon which you desire an opinion from me are:

1st. Whether or not the office of County Superintendent of Education of Talladega County is elective or appointive.

2nd. If the office is elective, will the present incumbent, Mr. John C. Williams, hold the office under the present appointment until the General Election in 1908?

The foundation of the present educational system of Alabama is found in the Act of the Legislature of 1879 (Acts 1878-9, p. 112). Under section 12 of the Act (page 123) it was provided that in each County in this State "there shall be an officer designated as County Superintendent of Education who shall be appointed by the State Superintendent of Education." This Act is codified into the Code of 1886 and section 954 of that Code provides: "Unless by special Act it is otherwise provided, a County Superintendent for each county in the State shall be appointed by the Superintendent of Education." After diligent search I am unable to find any special act governing the appointment or election of the County Superintendent of Education of Talladega County.

An Act approved February 13th, 1889 (Acts 1888-9, p. 396) entitled "An Act to provide for the election of County Superintendents of Education," is the only act since the Code of 1886 which in express terms affects the office of County Superintendent of Education of Talladega County. By this Act it was provided that the County Superintendents of Education should be elected, at the general election, on the first Monday in August, 1890, and at the general election every two years thereafter, in the same manner as other county officers were elected, subject, however, to the following proviso which is embodied in the latter part of section 1 of this Act: "Provided, that the provisions of this Act shall not apply to the counties of Barbour, Cleburne, Choctaw, Dallas, Greene, Hale, Mobile, Perry, Sumter, Washington, Wilcox, Talladega, Chambers, Madison, Jefferson, Randolph, Pickens, Autauga, Mont-

gomery, Lowndes and Macon." It will be observed that the above twenty-one counties are excepted from the provisions of this Act, including Talladega County. It is to be noted also that there is no provision in this Act prescribing the method, mode or manner by which the office of County Superintendent of Education shall be filled in the twenty-one counties so excepted from the general elective provision of said Act, nor was there a re-enactment of the law of the Code of 1886 with respect to the excluded or excepted counties. Therefore, as to those excepted counties, not only was section 954 of the Code of 1886 not repealed by the Act of February 13th, 1889, but on the other hand remained unchanged and in full force and vigor in its application to the twenty-one counties excepted by this Act. In other words, there was no means provided by the Act of February 13th, 1889, for filling the office of County Superintendent of Education in the excepted counties and, hence, the law of the Code of 1886 prevailed and continued operative in these excepted counties.

The Act of February 13th, 1889, was codified into the Code of 1896 and section 3550 provides that "unless by special act it is otherwise provided, a County Superintendent for each County is elected at each general election as provided in this Code." Section 3551 of the Code of 1896 fixes the terms of office, whether elective or appointive, at two years from the first day of October next after their eletcion.

The next statute which could possibly have any bearing on this question is the General Election Law of 1903 (General Acts 1905, p. 450). Sections 25 and 27 of this Act provide for the election of County Superintendents of Education on the first Tuesday after the first Monday in November, 1904, and every four years thereafter.

Upon an examination of the records in the Department of Education, it appears that on October 20th, 1903, Mr. John C. Williams addressed a letter to State Superintendent I. W. Hill, which contained a request for an opinion from the Attorney General "on the question arising under sections 25 and 27 of the General Election Law passed by the recent Legislature, as to whether the County Superintendents of Education whose offices have heretofore been appointive by the State Superintendent, will become elective under the new law." It

furthermore appears from the records of your office that on November 6th, 1903, in response to a request from the State Superintendent of Education wherein he transmitted the above inquiry of Mr. Williams, my predecessor, Hon. Massey Wilson, rendered an opinion relating "to the appointment of County Superintendents of Education." Mr. Wilson treats the subject in a general way and relying upon information furnished by the Department of Education, assumes that "local acts provide for the appointment of County Superintendents in some of the counties." In this opinion he uses the following language: "You wish to know whether this statute (the General Election Law of 1903) repeals the several local laws providing for the appointment of County Superintendents in some of the Counties." After showing clearly that there was no provision in the General Election Law above cited, which in express terms repeals local laws and adopting the well established rule of construction that repeals by implication are not favored by our Courts, in which principle I concur, the opinion concludes as follows: "I do not think the several local laws providing for the appointment of County Superintendents are repealed." It will be observed that Mr. Wilson did not express any opinion with reference to this particular office for Talladega County, and the views expressed by him do not determine the status of the office of the County Superintendent of Talladega County. Misapprehension has arisen by reason of the misapplication heretofore made in the Department of Education of the general principles announced by Mr. Wilson.

There are no local acts providing for the appointment of County Superintendents of Education in any of the counties since the Code of 1886. The Act of February 13th, 1889, is the only Act on this subject, which makes all of the County Superintendents elective except those mentioned under the proviso of said Act.

I do not think we need consider at great length the General Election Act of 1903. It is not applicable, according to my construction, except in so far as it creates a term of four years for County Superintendents of Eduaction elected in November, 1904; and with regard to this extended term of four years, it will be observed that this construction of the General Election Law is in perfect harmony with the opinion of the Supreme Court in the case of Powell vs. State, ex rel Hasty, 142

Ala. 80, and the case of Covington vs. Thompson, 142 Ala. 98, where the Supreme Court held, in effect, that the General Election Law of 1903 did not extend or change the term of any officer, this construction of the Court being confined to those holding office at the time the election law became effective, and having no application to subsequently elected officers under this Act. It is also clear that the effect of the general provisions of this Act, which appoint a time for holding a general election for certain officers (section 27 of the Election Law of 1903) was to create a term of four years for the officers mentioned in said section.

It has been suggested that the proviso and exception in the Act of 1899 was repealed by the General Election Law of 1903, not only because of the repugnancy between the two statutes, but because the Election Law of 1903 is a complete revision of the whole subject of elections. In this connection it is to be observed that sections 1573 et seq. in article 3 of the Code of 1896, which is devoted to "General Elections, What Officers Elected and When," is also a complete revision of this subject up to that period (February 17th, 1898, the date of the adoption of the Code of 1896). Section 1573 of this Code names what officers shall be elected, among those named being "County Superintendent of Education," and section 1577 provides that: "County Superintendents of Education shall be elected, except in cases otherwise provided for by special laws, on the first Monday in August 1898 and every two years thereafter." Following the same reasoning, it would appear to be equally true that the proviso and exception of the Act of 1889 would be repealed for like reasons by article 3 of the Code of 1896, if such contention is sound.

The point of prime and paramount importance, therefore, for the purposes of this opinion, is to determine the nature and character of the Act of February 13th, 1889. If this Act is a special or local law, it would not be repealed by section 3550 of the Code of 1896 or by the General Election Law of 1903. So the question arises, is this Act a special or local law, or is it a general law?

In the case of Baker vs. State, 122 Ala. 1, the Court had under consideration the Act approved February 28th, 1887, "To more effectually secure competent and well

qualified jurors in the several counties of this State, with the exception that the provisions of this Act shall not apply to the Counties of Henry, Mobile, Dallas, Talladega, Clay, Marengo, Cherokee, Etowah, St. Clair, Coffee, Dale, Greene, Marshall and Montgomery." It will be observed that this Act of 1887 is strikingly similar in character to the Act of 1889 under consideration. Chief Justice McClellan, rendering the opinion of the Court, said:

> "The Act of February 28th, 1887. 'to more effectually secure competent and well qualified jurors in the several counties of this State' with a provision excepting from its operation certain named counties, was a general and not a local or special law; it applied in general terms to the State *excepting* certain counties, and not to certain counties designated by name to the exclusion of the State generally; and it was not within the saving clause of section 10 of the Code of 1896, but was a public law of a general and permanent nature which was superseded and repealed or merged by or in the Code provisions covering the same subject."

This same Act was passed on again in the case of Childress vs. State, 122 Ala. 21, and the Supreme Court held that it was a *general* and *not a local or special law,* notwithstanding the exclusion of some counties from its operation; and its several provisions being embodied in the Code of 1896, were re-enacted by the adoption of said Code. Again in Mitchell vs. State, 129 Ala. 23, the Supreme Court had another occasion to consider this Act of February 28, 1887, and there held that it was a *general and not a local or special law,* notwithstanding the exclusion of some counties from its operation, and its several provisions being embodied in the Code of 1896 *were re-enacted by the adoption of said Code and as found therein said provisions are applicable to the Counties which were originally excluded from the operation of said Act.* See also Thompson vs. State, 122 Ala. 12 and Gilmore vs. State, 126 Ala. 20.

The opinion of the Court in the above cases can be applied with equal force and reason to the Act of February 13th, 1889, which is identical in its character and contains a similar provision excluding from its operation the twenty-one counties

named therein. I can reach no other conclusion, therefore, in the light of these decisions than that the Act of February 13th, 1889, is a general law and was repealed by the adoption of the Code of 1896; its general elective provisions being embodied in that Code, and that said provisions became applicable to the counties which were embraced in the original proviso of said Act.

The omission of the excepted counties in the codification of section 3550 furthermore shows, in my opinion, a clear intention to extend the operation of the Act of February 13th, 1889, by applying the elective feature to all of the counties named in the exception, unless those counties were governed by a special Act. It is contended that the words "unless by special Act it is otherwise provided" in section 3550 of the Code refer to the Act of 1889; that the words "special Act" were used incorrectly or not in their strict sense; and this, though the Code section is a codification of that very Act. I think the Act as codified rebuts this intention in and of itself by omitting all of the counties excepted from the original Act.

Maxwell vs. State, 89 Ala. 150.
O'Rear vs. Jackson, 124 Ala. 298.

There does not exist, nor has there ever existed, a local or special law for Talladega County providing for the appointment of the County Superintendent of Education.

If it be conceded, however, that the Act of February 13th, 1889, is a special or local law and not repealed by section 3550 of the Code of 1896, the proviso in said Act applicable to the excepted counties contains no provision for the method or manner of filling the office of County Superintendent in those counties, as explained and demonstrated in the former part of this opinion, and I cannot agree with the contention that for the purpose of giving force and vitality to a special or local law which does not provide of and by itself a manner of filling a county office, that section 954 of the Code of 1896 is continued operative for such purpose, when the Code of 1886 has been superseded in every respect by the adoption of the Code of 1896.

No one was elected to fill the office of County Superintendent of Education of Talladega County at the General Election held in 1904. In 1905 Mr. Williams was appointed to hold

the office, and was commissioned as County Superintendent of Education for two years and until his successor should be elected and qualified. The General Election Law of 1903, as before shown, fixes the term of this office at four years, so that a County Superintendent of Education of Talladega County should have been elected at the General Election in 1904. This not having been done, it follows that the office was properly filled by appointment by the State Superintendent of Education (section 3559 of the Code) and that the appointee was and is entitled to hold the office for the unexpired term, namely until his successor is elected at the General Election in 1908. It is a rule of law, well established, that the term of an office cannot be abridged by the appointing power.

23 Am. & Eng. Enc. of Law (2 Ed.) p. 405.

The only question remaining for determination is what effect, if any, has section 110 of the Constitution of 1901 upon the construction of statutes enacted prior to the adoption of the said Constitution. Under the influence of the opinion of the Supreme Court in the case of the State ex rel. Covington vs. Thompson, 147 Ala. 98-110, I think it is clear that the Act of 1889 is a general law within the meaning of section 110 of the Constitution. It is my opinion, however, that the use of the words in section 110 of the Constitution,—"within the meaning of this article,"—rebuts the idea that this definition of a general law was intended to be applied to statutes enacted by past Legislatures. It is a general principle of Constitutional Law, that Constitutions are constructed to operate *prospectively* only, unless on the face of the instrument a contrary intention is manifest beyond reasonable questions.

Am. & Eng. Enc. (2 Ed.) Voy. 6, p. 217.

In conclusion, therefore, it is my opinion:

1st. That the office of County Superintendent of Education of Talladega County is elective and has been so since the adoption of the Code of 1896, namely February 17th, 1898.

2nd. That the present incumbent, Mr. Williams, holds office, by virtue of his appointment in 1905, until his successor is elected at the next General Election in 1908.

The question here decided is of great importance inasmuch as this opinion not only affects the mode of filling the office of County Superintendent of Education of Talladega County, but applies with equal force to those offices in the counties of Hale, Greene, Choctaw and probably some others which were originally embraced in the proviso and excepting clause of the Act of 1889. For this reason I deem it advisable, if possible, that the question be adjudicated in the Courts by some appropriate proceeding, in order that there may be uniformity of action in all of the Counties affected by this ruling.

I remain,

Very respectfully,
ALEX. M. GARBER,
Attorney General.

Deposit of Securities in Alabama by Virginia Insurance Company—Retaliatory Statutes.

October 5, 1907.

Hon. A. C. Sexton,
Deputy Insurance Commissioner,
Capitol.

Dear Sir:—

On the 19th ultimo, you requested me to advise you whether a deposit of security should be required in this State by a Virginia company, the laws of Virginia requiring a deposit of foreign insurance companies,—there being at this time no Alabama company doing busines in Virginia. In other words the question seems to be whether this deposit should be required, regardless of whether an Alabama company is doing business in a State whose laws require a deposit of securities by a foreign company.

It is my opinion and I so advise you that it is immaterial under section 2595 of the Code, whether an Alabama company is now doing business in the State of Virginia so far as the deposit of securities in Alabama by a Virginia company is concerned, so long as the laws of Virginia require the deposit in

the event an Alabama company should do business in that State. The statute fixes but one condition for this deposit and that is the existence of the law of Virginia.

I herewith return letter from Mr. M. J. Dillard, General Manager of the Virginia State Ins. Co., enclosed with your letter.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

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1. Use of Prisoner as Trusty Does Not Change His Status—2. Method of Apportionment of School Funds.

October 18th, 1907.

Hon. H. Y. Brooke,
Assistant Examiner of Public Accounts,
Capitol.

Dear Sir:

On the 20th ultimo you requested me to advise you on the following questions:

First. Can a Sheriff use a prisoner as a trusty, the prisoner doing such services as cleaning the Court House and Jail, carrying food to prisoners, running errands and performing such other duties as the sheriff may direct about the house, etc., and charge the State with the feed bill for such prisoner.

Second. Have the Superintendent of Eduaction and the School Boards of the County the right to apportion the school money in the districts so as to give white children in one school district thirty cents per capita, and those in other school districts three dollars per capita.

Answering your questions in the order stated, I beg to say the sheriff is entitled to a fixed amount for feeding each prisoner in jail under charge or conviction, and there is no provision in the statute (Code section 4565) depriving the sheriff

of this compensation where he uses the prisoner as mentioned in your question. Unless the Legislature so declares there is no power or authority for making such deduction.

Section 256 of the Constitution directs that "the public school funds shall be apportioned to the several counties in proportion to the number of school children of school age therein, and shall be so apportioned to the schools in the districts or townships in the counties as to provide, as nearly as practicable, school terms of equal duration in such school districts or townships in the counties as to provide, as nearly as portioned to the counties on a per capita basis, and the school boards of the counties apportion the funds, not on a per caipta basis, but in such manner as to provide, *as nearly as practicable, school terms of equal duration in the several districts or townships in the county.* A large discretion is thus reposed in the county boards, and the presumption will be indulged that the apportionment as made, was necessary to carry out the constitutional requirement.

As the second question above deals with a question relating to the public schools, I am forwarding a copy of this letter to the Superintendent of Education.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Fraternal Insurance Companies Should Make Report to Insurance Commissioner.

October 17th, 1907.

Hon. Frank N. Julian,
Insurance Commissioner,
Montgomery, Alabama.

Dear Sir:—

I have your favor of the 5th instant, requesting me to advise you whether the "Heralds of Liberty," a Fraternal Organization incorporated by a special Act of the Legislature of Feb-

ruary 12th, 1901, (Acts 1900-1, p. 990), should make the report to the Insurance Commissioner required by section 4 of that Act.

Clearly this report should be made unless this corporation is relieved from that duty by legislation subsequent to February 12th, 1901. The only statute since, to which my attention has been directed, and which in any way bears upon the question, is the act approved February 28th, 1903, (General Acts 1903, p. 138). Section 5 of this Act relieves certain secret or benevolent societies from its requirements. Section 2 of that Act requires the organizations which come within its terms to make certain reports to the Insurance Commissioner. Section 5 of the Act is an amendment of section 1120 of the Code and for the purpose of this opinion is a mere re-enactment of that section having for its object the relieving of the classes named from its terms. It was not intended in my opinion to work a repeal of the provisions of a special Act which might have been inconsistent therewith.

I, therefore, advise you that the "Heralds of Liberty" should make the report to you required by section 4 of the Act of Feb. 12th, 1901.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Live Stock Sanitary Statute--Does Not Apply to Stock-Law County.

October 17th, 1907.

Dr. C. A. Cary,
State Veterinarian,
Auburn, Alabama.

Dear Sir:—

I have your favor of the 3rd of October reqeusting my interpretation of the Act approved August 6th, 1907, known as the Jenkins Amendment of the Act of March 12th, 1907, establishing a State Live Stock Sanitary Board, etc., the amendment being in the following language:

"That none of the provisions of this Act shall apply to or be put in force in a County where the majority of its area is not under a stock law or a law prohibiting cattle from runnig at large."

You desire to know:

1st. Whether you can do any work of any kind

(a) In no-stock law county.

(b) In a county where the majority of its area is not under stock law or law permitting cattle to run at large.

2nd. Whether you can control the shipment of animals from without the State into counties where a majority of the area of the counties is not under stock law?

Answering your questions in the order stated, I beg to advise that you can do no work in a county where the majority of its area is not under a stock law or a law prohibiting cattle from running at large. The provisions of the Act of March 12th, 1907, do not apply to a county where the majority of its area is not under a stock law and this is equally true of a county in which there is no stock law of any kind.

2nd. Section 6 of the Act of March 12th, 1907, provides that all live stock, except such live stock as are to be used for immediate slaughter, when brought into Alabama by a person, company, corporation, railroad or other transportation companies, shall be accompanied by a certificate of health, and said certificate shall state that said animal or animals are free from contagious, infectious or communicable disease and the carrier or the carriers of the cause or the causes of such diseases. This certificate must be made by a qualified veterinarian immediately after he has personally examined the live stock and before the live stock has been shipped into Alabama. This certificate shall be attached to, and accompany, the shipping bill of the live stock to the place to which the live stock is shipped, and the owner of the live stock or agent of the transportation company shall mail or send said certificate to the State Veterinarian, immediately following the arrival of the live stock at its place of destination. The State Veterinarian shall furnish qualified veterinarians and transportation companies with blank health certificates at actual cost.

It is my opinion that the requirements of this section apply to a shipment of animals from without the State into counties where a majority of the area of the counties is not under stock law as well as to those counties where the majority of the area is under a stock law. In other words, it is immaterial so far as the requirements of this section are concerned that the county is not otherwise affected by the Act.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Board of Registrars Hold Session on Special Days; Before What Elections.

October 23rd, 1907.

Hon. Wm. W. Brandon,
State Auditor,
Montgomery, Alabama.

Dear Sir:—

Some days ago you handed me a letter from Mr. R. G. Hewitt, Chairman of Jefferson County Board of Registrars, with the request that I advise you in regard to the question referred to by Mr. Hewitt in his letter. The following is the question submitted for my decision:

"Whether there is any authority of law for a session of the County Board of Registrars on Friday and Saturday immediately preceding an election for County Prohibition."

Section 6 of An Act "To further regulate elections in the State of Alabama," approved October 9th, 1903, directs that the Board of Registrars in each County shall visit each precinct once and oftener if necessary between July 1st and October 1st, 1904, and each two years thereafter, to make a complete registration of all persons entitled to register. This section also provides that the "Board of Registration" in each county shall meet at the Court House on the last Monday in September, 1904, and each two years thereafter, and shall remain in session one week for the registration of voters.

The second paragraph of section 6 of this Act contains the following provision with respect to the time and place of registration:

> "On Friday and Saturday next preceding the day of each general or municipal election, held under the General Municipal Laws of this State, the registrars shall sit in the Court House of each county during such days, and, in the event of such municipal election being held in a town other than the county site, and on a date other than that of any special or general election, said registrars shall sit on Friday and Saturday preceding such election at some place within the corporate limits of the municipality wherein such proposed election is to be held, of the time and place of which sitting due notice shall be given as provided for in the matter of regular registrations."

There is no provision for a special sitting of the Board of Registrars between October 1st, and July 1st, except in those instances mentioned above, which deal only with general elections and municipal elections. There is, therefore, no authority of law under this Act for special sessions of the Board of Registrars on Friday and Saturday next preceding the day of election held under An Act "To prohibit, regulate and restrict the sale or distribution of intoxicating liquors, etc." approved February 26, 1907.

Section 106 of the Act of 1903, which provides that all of the provisions of the Act shall apply to all primary elections and all elections by counties or municipalities in this State, has no application to this question. The language of the section is not broad enough to include within its application a statutory duty not otherwise specifically imposed on the registrars.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Note:—The Act of Nov. 23, 1907, has amended the law so as to require the Board of Registrars to sit also on Friday and Saturday next preceding each primary or special election.

1. Authority of County Board of Health to Elect Health Officers for City. 2. Authority of County Board of Health to Elect Physician to Attend Inmates of Poor House of County.

November 14th, 1907.

Dr. W. H. Sanders,
State Health Officer,
Montgomery, Alabama.

Dear Sir:—

On November 12th you directed a communication to me containing the following official inquiries:

1st. Has the County Board of Health of Montgomery County the right to elect a health officer for the City of Montgomery, and would the authority of a health officer so elected become immediately operative?

2nd. Has the County Board of Health of Montgomery County the right to elect a physician to attend the inmates of the poor house and jail of Montgomery County, and would the authority of a physician so elected become immediately operative?

I herewith submit my opinion upon the questions propounded seriatim:

1st. An Act "To amend, reconstruct, and provide for the enforcement of the laws relating to the public health, etc.," approved October 9th, 1903, contains, among the other duties of the County Boards of Health, the following provision in subdivision (f) of section 4. "To elect a health officer, removable at pleasure, for any incorporated city or town in the county whose existing charter does not otherwise provide for the election of a health officer, provided that a health officer of a county may be deemed eligible for the position of health officer of any one or more incorporated cities or towns in the same county, and said incorporated cities and towns shall fix the salaries of their health officers respectively."

In section 3 of the amendatory act, approved August 15th, 1907, the above subdivision (f) of section 4 was amended so as to read as follows: "To elect a health officer, removable at pleasure, for every incorporated city or town in the county

and to fix the term of office of such health officer, provided that the health officer of a county may be eligible for the position of health officer of any one or more incorporated cities or towns in his county, and provided that the authorities of said incorporated cities and towns shall fix fair salaries for their respective health officers."

You will observe that in the law as amended the following words are omitted, "*whose existing charter does not otherwise provide for the election of a health officer.*" It will be observed also that in section 1 of the amendatory act of August 15th, 1907, that the County Medical Societies in affiliation with the Medical Association of the State of Alabama, are constituted Boards of Health for their respective counties and also for all incorporated cities and towns therein. It seems clear that it was the manifest and unmistakable intention of the Legislature to repeal all general and local or special laws in conflict with the express terms of section 4 of the act of 1903 as amended by section 3 of the act of August 15th, 1907. And to this extent, it is my judgment that section 52 of an act" To establish a new charter for the City of Montgomery," approved Feb. 21st, 1893, is repealed, and under the recent act, it is the duty of the County Board of Health of Montgomery County to elect a health officer for the City of Montgomery. This act was approved August 15th, 1907, and contains both penal and remedial provisions. The Act as a whole became effective on September 15th, 1907.

2nd. Subdivision (g) of section 4 as amended in section 3 of the Act of August 15th, 1907, reads as follows: "To elect physicians to attend the inmates of the county poor house and jail and to fix the terms of office of such physicians, provided that both of said positions may be filled by the same physician or by the county health officer, and provided further the court of county commissioners or board of revenue shall fix fair salaries for such physicians as may be elected to fill said positions or for the county health officer should he be elected to fill them or any one of them." This subdivision is an addition to section 4 of the act of 1903 and contains an entirely new provision, under whose authority it becomes the duty of the County Board of Health of Montgomery County

to elect a physician or physicians to attend the inmates of the county poor house and the county jail. As stated above this act became operative on September 15th, 1907.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Children of Mixed Blood Properly Excluded From White Schools.

(Unofficial.)

November 27th, 1907.

Hon. R. E. Blount,
Sunflower, Alabama.

Dear Sir:—

Owing to the pressure of official work it has been impossible to reach your letter of November 11th, before this date. I am not authorized under the statute to render an official opinion except in certain instances and to certain state officials. See section 2028, subdivision 1, of the Code of 1896.

I will give you my views unofficially on the subject of your letter and as it is a matter which is usually left largely to the County Board of Education, it seems that it would be wiser for you and your County Board to adjust it locally without making a State question of it.

You will observe that in subdivision 5 of section 2 of the Civil Code of 1896 the term "negro" includes mulatto and that the term "mulatto" or "person of color" is a person of mixed blood, descended on the part of the father or mother from negro ancestors, to the third generation inclusive, though one ancestor of each generation may have been a white person. By reference to section 256 of the Constitution of Alabama, you will note the following language used concerning schools: "Separate schools shall be provided for white and *colored children* and no child of either race shall be permitted to attend a school of the other race."

If the term "person of color" used in the Code and the term "colored children" used in the Constitution are held synonymous and identical in signification, and the Code definition of the term "person of color is applied to the expression "colored children" as used in the Constitution, it would appear that these children of "Cajons" would not come within the inhibition of the Constitutional provision quoted above which provides for special schools for white and colored children and directs that no child of either race shall be permitted to attend the school of the other race. It is my judgment, however, after an examination of the authorities, that the term "colored children" in the constitution is used in a broader and more general sense than the term "mulatto" or "person of color" as defined in section 2 of the Code of 1896.

In the case of Van Camp vs. Board of Education, etc., 9 Ohio State, p. 406, the Supreme Court of Ohio held that a State statute, "to provide for the re-organization, supervision and maintenance of common schools," is a law of classification and not of exclusion, providing for the education of all youths within the prescribed ages, and the words "white" and "colored" as used in said act, are used in their popular and ordinary signification; and that children of three-eights African and five-eighths white blood, but who are distinctly colored, and generally treated and regarded as colored children by the community where they reside, are not, as of right, entitled to admission into the common schools, set apart under said act, for the instruction of white youths. In discussing the subject the Court said: "To which of these classes do the children of the plaintiff in error belong—'white' or 'colored?' They are not in the ordinary, if they are in a legal sense, white. The demurrer admits that they are, in fact, if not in law, colored children. Our standard philologist, Webster, defines "colored people" to be "black peoples—Africans or their descendants, mixed or unmixed." Such is also the common understanding of the term. A person who has any *perceptible admixture* of African blood, is generally called a colored person. In affixing the epithet "colored," we do not ordinarily stop to estimate the precise shade, whether light or dark, though where precision is desired, they are sometimes called "light colored," or "dark colored," as the case may be.

The term "colored person" (which seems to be identical with the phrase "colored children" as used in the Constitution) is defined in Cyclopedia of Law and Procedure, Vol. 7, p. 400, as follows: "Not a phrase of art, but often applied to black people, Africans, or their descendants, mixed or unmixed; persons of African descendants or negro blood; persons of the negro race; persons who have any perceptible admixture of African blood." In the case of Johnson vs. Norwich, 29 Conn. p. 407, the term colored person is held to embrace not only all persons descended wholly from African ancestors and, therefore, of pure and unmixed African blood, but those who have descended in part only from such ancestors, and *have a distinct, visible admixture* of African blood."

It would, therefore, appear that if the term "colored children" as used in the Constitution is held identical in signification with the term "colored person" as that phrase is used in the authorities above cited, the children of the "Cajons" referred to in your letter, would be properly excluded from the schools provided for white children if they fall within the definition and description of "colored person," (having a perceptible admixture of African blood) in the authorities quoted. However, the decisions on this point are in conflict, the courts of several states holding that the term "negro" and "colored person" are identical. See Jones vs. Comm. 80 Va. 538; Linton vs. State, 88 Ala. 216.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Feed Bill for Prisoner Detained on Warrant Issued by Justice of Peace—Payable by State.

December 2, 1907.

Hon. H. Y. Brooke,
Ass't. Examiner of Public Accounts,
Brewton, Alabama.

Dear Sir:—

Replying to your favor of the 22nd instant, I beg to advise you that where a prisoner is detained by the sheriff under a

warrant issued by a justice of the peace, the feed bill, for feeding the prisoner while in jail, must be paid by the State. See Code 4565.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Removal Fees—Defendant Cannot be Sentenced to Hard Labor for.

December 6th, 1907.

Hon. John Purifoy,
Examiner of Public Accounts,
Capitol.

Dear Sir:—

On the 5th of November, 1907, you requested me to advise you whether fees paid to sheriffs from the State Treasury for removing prisoners under section 4565 of the Code should be included in sentences for costs in cases where the fine and costs are not presently paid or judgment confessed for the same.

The language of section 4565 of the Code so far as pertinent to this question (as amended by Acts of 1898-9, page 57) is as follows:

> "For removing any prisoner upon a change of venue granted in his case, or who is arrested on a warrant issued by a justice of the peace, or on an indictment and confined in a county other than that in which he is triable, or arrested for contempt, or as a defaulting witness, etc. * * * to be paid by the State in case of felonies, and by the county when the offense committed is a misdemeanor, upon his sworn statement and account therefor accompanied by a certificate of the Clerk of the Court in which the prisoner is, or will be, triable, that such fees have been reported to and docketed, or will be docketed by him. If such prisoner is convicted the clerk of the Court in which conviction is had shall tax the costs of such removal against him, and shall immediately upon the adjournment of the Court, issue execution therefor and for the other

costs, and deliver the same to the sheriff of his county, and such sheriff upon the collection of the costs of such removal shall pay the same over to the State Treasurer."

Execution is required to be issued against a prisoner under section 4559 of the Code. See also section 4570. Under section 5426 of the Code the Court is authorized to impose certain hard labor punishment upon the defendant if the costs are not paid or judgment confessed therefor. It is my judgment that the costs here referred to are the "costs of conviction," and that such costs do not include removal fees.

Considering the statutes mentioned above *in pari materia,* my conclusion is that where the fine and costs are not presently paid or judgment confessed therefore, the defendant cannot be sentenced for the removal fees referred to above. But, in such cases execution should issue against the defendant for the collection of the same. In other words it seems to be the purpose of the statutes to make this fee a debt due from the defendant to the State for the collection of which the State must rely upon execution. Neither can the defendant be required to confess judgment for such removal fees.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Tax Abstract; When Contract for Complies With Statute—Compensation for Making.

December 26th, 1907.

Hon. Wm. W. Brandon,
State Auditor,
Capitol.

Dear Sir:—

On the 20th instant you referred to me two letters from Messrs. W. P. and W. L. Chitwood of Tuscumbia, addressed to you enclosing a file of papers relative to the contract proposed to be made between the Board of County Commissioners of Colbert County and the North Alabama Abstract Com-

pany. The Messrs. Chitwood writing at the instance of the Commissioners Court of Colbert County desire to be advised what state taxes or what part of State taxes the Commissioners are authorized, under the Act of February 28th, 1901, (General Acts 1900-1, p. 1844) to allow the North Alabama Abstract Company for its services in preparing the abstract authorized by that Act.

On June 14th, 1907, at your request I advised you concerning a contract which had been made between the parties above mentioned and in the course of that letter, after quoting parts of the Act referred to, I used this language: "Clearly the Act limits the compensation to the amount of such taxes on lands which have escaped taxation for five consecutive years and cannot include taxes which escaped during any number of years less than five." I am still of the opinion there expressed. The contract should provide, so far as the State taxes are concerned, that the amount owing by the State thereunder shall be paid by the Tax Collector of the County out of the taxes collected by him on lands shown to have escaped taxation for five consecutive years as reported to him in the manner now provided by law. You will observe that the compensation authorized to be paid on behalf of the State is paid by the Tax Collector and out of the taxes on the lands which are placed upon the assessment books through the instrumentality of the map or plat prepared under the authority of this Act. If any parcel of land has escaped taxation for any number of years less than five, prior to the making of the contract with the Abstract Company, the letter, in my opinion, is entitled to no part of the tax realized on such lands.

I trust with this further discussion of the matter, the parties will be able to reach an agreement which is authorized by the statute.

I herewith return the file of papers handed me in connection with the matter.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Mortgage to Indemnify Surety Against Contingent Liability Not Subject to Record Tax.

December 26th, 1907.

Hon. Wm. W. Brandon,
State Auditor,
Capitol.

Dear Sir:—

Some days ago Hon. Price Williams, Jr., Judge of Probate of Mobile County, requested me to advise him whether a certain mortgage executed by Charles C. Dickens to the American Bonding Company of Baltimore, was subject to the privilege tax on mortgages provided for in section 7 of the Act of March 7th, 1907, (General Acts 1907, p. 455).

In connection with his request Judge Williams forwarded to me a copy of this mortgage from which it appears that the purpose of the mortgage was to indemnify the mortgagee against any loss which it might sustained by reason of having become the surety of said Dickens upon a certain supersedeas or appeal bond. And Judge Williams also enclosed a letter addressed to him from Messrs. Stevens & Lyons of Mobile, relative to the matter.

After carefully considering the question, I am of opinion that this instrument is not subject to the privilege tax on mortgages provided for in the Act above referred to, and should be recorded by Judge Williams upon the payment of the record fee.

The Act provides "That no mortgage, deed of trust, contract of conditional sale, or other instrument in the nature of a mortgage, which is given to secure the payment of any debt," shall be received for record unless the privilege tax is paid. In my judgment, the instrument under consideration does not secure the payment of a debt within the meaning of the statute. Rapalje & Lawrence's definition of debt is as follows:

> "In the strict sense of the word, a debt exists when a certain sum of money is owing from one person, the debtor, to another. Hence, debt is properly opposed (1)

to unliquidated damages; (2) *to liability when used in the sense of an inchoate or contingent debt; and* (3) to certain obligations not enforceable by ordinary process."

I agree with this definition and find it supported by several authorities. The instrument executed by Mr. Dickens imposes upon him an inchoate or contingent liability which may never ripen into a debt, and I do not think it was the intention of the statute to use the word debt in a sense different from that in which it is commonly understood.

As this matter relates to the public revenue, I address this letter to you and request that you furnish a copy of the same to Judge Williams for his advice in the premises.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

County Health Officer—Salary of Cannot be Increased During Term of Office.

December 26th, 1907.

Dr. W. H. Sanders,
State Health Officer,
Montgomery, Alabama.

Dear Sir:—

On the 18th of November, 1907, you requested me to advise you whether under the Constitution the salary of the health officer of a county can be increased during his term of office; that question being suggested by the Act of Aug. 9th, 1907, (General Acts 1907, p. 575).

The Act referred to authorizes the Board of County Commissioners or Board of Revenue of the County to fix the salary of the county health officer and it seems that the salary here authorized is an increase of the salaries heretofore paid to health officers.

Section 281 of the Constitution provides that "The salary, fees or compensation of any officer holding any civil office of profit under this State or any county or municipality thereof,

shall not be increased or diminshed during the term for which he shall have been elected or appointed."

The County Health Officer is an officer holding a civil office of profit within the meaning of this section and his salary cannot be increased or diminished without violating the mandate of the constitution.

You further suggested to me that in view of the fact that the term of office as well as the salary of the county health officer is fixed by the Court of County Commissioners or Board of Revenue of the respective counties, that the term might be abridged, the incumbent resigning, a new term fixed, with the view of having the person then elected to fill the new term draw an increased salary. This is a violation of the Constitution as much so as if the incumbent had remained in his office until the expiration of the term to which he was elected and drawn his increased salary. It is the purpose and spirit of this section of the Constitution to entitle the officer to the same salary *during the term for which he was elected.* The language of the section is emphatic to that end.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Act Providing for Publication and Distribution of Code Appropriates Money for This Purpose.

December 26th, 1907.

Hon. B. B. Comer,
Governor of Alabama,
Capitol.

Dear Sir:—

On the 10th instant you requested me to advise you whether the act of July 27th, 1907, providing for the publication and distribution of the Code, (General Acts 1907 ,p. 504) appropriated the money necessary to pay for the printing and binding of the Code. With your letter you enclosed a certificate and recommendation of the Code Commissioners to you on

which the Marshall & Bruce Company, to whom the contract was awarded for the printing and binding of the Code, desire to draw the sum of fourteen thousand ($14,000.00) dollars as compensation *pro tanto* to them for printing and binding the Code. Section 8 of the Act directs the Secretary of State to advertise for bids for the printing and binding of the Code and directs the Secretary of State to award the contract to the best responsible bidder recommended by the Commissioners. There is a further direction to the Governor to pay the contractor before the work is completed such part of the agreed price as he may deem just. It thus appears that the Legislature has fixed a method by which the contract price may be ascertained and directs the Code Commission to enter into a contract on the part of the State with the contractor for the payment of the agreed price when ascertained. No special appropriation therefore, is necessary to entitle the contractor to demand his compensation nor to authorize the Auditor to draw a warrant on the Treasury for its payment. "The statute of itself operated as an appropriation and satisfied the constitutional requirement that money shall be drawn from the Treasury only upon appropriations made by law."

Riggs vs. Brewer, 64 Ala. 282.

It follows, therefore, that upon your direction to the Auditor he should draw his warrant in favor of the contractor for the compensation or for so much thereof as, from time to time, under the Act you are permitted to direct the payment of.

I herewith return the certificate of the Code Commissioners above referred to.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Appropriation to University Continuous During Quadrennial Term.

December 26th, 1907.

Hon. B. B. Comer,
Governor of Alabama,
Capitol.

Dear Sir:—

On the 13th instant you requested me to advise you whether the amount appropriated for buildings for the University of Alabama by the Act approved March 6th, 1907, (General Acts 1907, p. 421) is a continuous appropriation. In other words, you desire to know whether the quadrennial appropriation of one hundred thousand dollars must be drawn from the State Treasury during each one year period.

It is my opinion that this appropriation is continuous; and that if, during any one year of the quadrennial period, the one hundred thousand dollars should not be exhausted, the balance thereof will be available at any subsequent time during the four year period.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Printing for State Game and Fish Commissioner—How Paid for.

December 23rd, 1907.

Hon. John H. Wallace, Jr.,
State Game and Fish Commissioner,
Capitol.

Dear Sir:—

I have your favor of the 14th instant requesting me to advise you whether the State Game Commissioner, after having the blanks and other printed matter necessary to carry out the provisions of the Act, printed under the State printing contract of Feb. 19th, 1907, is required to have all subsequent printing done under state contract.

It is my opinion that section twenty-two of this Act required only the first or preliminary blanks and other printed matter necessary to carry out the provisions of the Act, to be printed under the State Contract, and that subsequent printing should be done under the supervision of the Commissioner and paid for as an expense of his Department under section thirty-nine of the Act above referred to.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Insurance Companies—License Fees and Taxes to be paid by.

January 6th, 1908.

Hon. Frank N. Julian,
Secretary of State.
Capitol.

Dear Sir:—

On the 18th ultimo you requested me to advise you with reference to the applicability to insurance companies which are foreign corporations of the several acts referred to below:

Act approved March 4th, 1907, (General Acts 1907, p. 318) entitled "An Act to make subject to taxation in this State money lent, solvent credits and credits of value and moneyed capital." This act does not apply to foreign insurance companies engaged in lending money in Alabama.

Act of March 7th, 1907, (General Acts 1907, p. 418), relates to the franchise tax annually required of foreign corporations doing business in Alabama, the tax being based upon the amount of capital employed. You desire to know whether insurance companies should pay this tax inasmuch as the act does not specifically except any special class of corporations from its provisions. If an insurance company, being a foreign corporation, employs capital in this State it should pay the tax required by the Act, and if such capital is employed in mortgage loans on real estate, the amount of tax will be paid upon the basis fixed by the Act approved July 27, 1907 (p. 521, Acts 1907). But I do not regard the capital employed

within the meaning of this Act as monies and other assets ordinarily used by insurance companies in the advance of the business of insurance. If the company departs from its insurance business and undertakes a different business and employs its capital in such business, the tax should be paid on the capital employed. The act of March 7th, (General Acts 1907, p. 422) relates to admission fees required of foreign corporations for engaging in business in Alabama. In my opinion this law is not applicable to insurance companies. The license and other taxes required to be paid by such companies is specifically fixed by the Act of March 4th, 1907 (General Acts 1907, p. 323.)

Section 9 of the Act of March 7, 1907 (General Acts 1907, p. 466), imposes annual license tax on every person, firm or corporation engaged in this State in the business of lending money. You desire to know whether the Act applies to insurance companies lending money in Alabama on their policies or in any other manner by such companies. In my opinion it does not apply to insurance companies lending money in Alabama on their policies. But, if an insurance company engages otherwise in the business of lending money, it would be subject to the payment of this license tax.

The Act of the special session of the Legislature, approved Nov. 30th, 1907, amends the act of March 7th, 1907, (General Acts 1907, p. 418) and relates to the franchise tax required of foreign corporations. What I have said above as relates to the Act of March 7th, 1907, applies to this Act.

Answering your last question, I beg to say that inasmuch as section 2584 of the Code, as amended by the Act of March 4th, 1907, (General Acts 1907, p. 323) fixes the amount to be paid by insurance companies for entering the State and the amount of taxes to be paid from time to time, this class of foreign corporation is not subject to the provisions of the several acts above mentioned, unless they depart from their business of insurance and engage in other businesses. The evident purpose of the Code section referred to as well as this act, was to exempt foreign insurance companies from the payment of other taxes than those specifically provided in the Act. (See Montgomery Traction Company vs. State, 44 So. 541.)

Yours very truly,
ALEX. M. GARBER,
Attorney General.

License and Privilege Tax on Corporations—When Payable.

January 14th, 1908.

Hon. Wm. W. Brandon,
State Auditor,
Capitol.

Dear Sir:—

Hon. Geo. Leslie, Judge of Probate of Houston County, has requested me to advise him whether the Houston Guano Company and the Dothan Guano Company, both being corporations and mixers of fertilizers, are required to pay the license tax imposed on corporations and mixers. And also whether a warehouse, being a corporation, is required to pay both the corporation and warehouse licenses. I enclose copy of the letter of Judge Leslie to me; also copy of a letter from J. R. Crawford, President, on the same subject, and I address this communication to you as the matter relates to the public revenue, and request you to forward a copy of the same to Judge Leslie and to Mr. Crawford.

It is my opinion that both the license tax imposed on corporations by subdivision 24 of section 4122 as amended by the Act of March 5th, 1901, (Acts 1900-1, p. 2616) and the license tax imposed upon fertilizer mixers and factories by section 20 of the Act of March 7th, 1907, (General Acts 1907, p. 470), must be paid by a corporation engaged in business as a mixer of fertilizers. The Supreme Court held this in effect in the case of Troy Fertilizer Company vs. State, 134 Ala., p. 333.

Answering the last question asked by Judge Leslie, it is my opinion that a warehouse, being a corporation, must pay both the corporation license tax and the license imposed upon a warehouse by subdivision 82 of section 4122 of the Code, as amended by the Act of March 7th, 1907, (General Acts 1907, p. 469.)

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Tax Collector and Assessor of Baldwin County Entitled to Commissions on School Fund—How Payable.

January 30th, 1908.

Hon. John Purifoy,
Examiner of Public Accounts,
Montgomery, Alabama.

Dear Sir:—

Your communication of January 24th, with reference to the accounts and vouchers of H. H. Cooper, Tax Collector of Baldwin County, has been received. You state that the commissions, provided for by sections 3925, 3926, 3997 and 3998 of the Code so far as concerns the special school fund levied in Baldwin County, are not deducted from the fund arising under that levy, but are deducted by the Tax Collector and permitted by the County Treasurer, from what is designated, the general fund of said county; and you desire me to advise you on the following questions:

1st. Are the Assessor and Collector of Baldwin County entitled to commissions on account of the school fund levied in that county? 2nd. If they are entitled to commissions, from what fund should it be taken?

Section 3925 of the Code prescribes the commissions to which the Tax Assessor is entitled on both State and County taxes. We have only to deal here with the subject of county taxes and, hence, I quote only that portion of the Code section which refers to county taxes, as follows: "He shall also be entitled to receive from the Tax Collector the rates of commissions on the amount of county taxes, whether general or special (but not on each separately), regularly assessed, carried up or extended on the assessment book, giving duplicate receipts to the Tax Collector for all amounts so paid him.

Section 3997 of the Code prescribes the commissions of the Tax Collector on general and special taxes, and with regard to the latter class of taxes provides as follows: "He shall also be entitled to receive 2 per cent on all collections made by him of special taxes, whether such tax be levied for the State or County, to be paid out of such special taxes."

I have also examined section 1 of an Act, "To provide for the better support of the public schools of Baldwin County, Alabama, etc.," approved Feb. 28th, 1901 (Acts 1900-1, p. 1446, and also the repealing clause of section 9 of this Act.

Under sections 3925 and 3997 of the Code of Alabama, it is clear that the Tax Assessor and Tax Collector are entitled to receive commissions on all assessments and collections made by these officers of special taxes. The language used in section 3925 is that the Tax Assessor shall receive commissions on the amount of County taxes, either general or special regularly assessed; and in the case of the Tax Collector, section 3997 provides in terms that the Tax Collector shall be paid commissions on all collections of special taxes *out of such special taxes.* The provision in the local Baldwin County Act, supra, that "said special tax shall be used only for the support and maintenance of public schools in said county as hereinafter provided" cannot be construed in my judgment to mean, that these officers shall be deprived of their commissions on the assessments and collections of such special tax. Nor do I think that the repealing clause of section 9 of said Act repeals the general law which provides for such commissions for these officers for the assessment and collection of special taxes. It cannot be seriously contended that it was the intention of the Legislature in the local Act to take away from the Tax Assessor and Tax Collector their commissions on the special school tax. Neither can it be asserted as a sound proposition of law under the statutes of Alabama that these officers are required to collect a special tax of this character and charge the commissions for their services to the "general fund" and thus relieve the special fund of its legal and proportionate share of governmental expenses.

It is my opinion, therefore,

1st. That the Assessor and Collector of Baldwin County are entitled to commissions on account of the school fund levied in that County.

2nd. That such commissions should be taken from the special school tax according to the scale provided under the general law.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Insurance Commissioner—No Authority to Convert Securities to Satisfy Judgment.

February 3rd, 1908.

Hon. Frank N. Julian,
Secretary of State,
Capitol.

Dear Sir:—

On the 28th ultimo you requested me to advise you whether you are authorized to convert into cash, for the satisfaction of a judgment, securities deposited with you by a mutual aid association in accordance with section 1 of the Act approved Aug. 9th, 1907, (General Acts 1907, page 775).

You inform me that the question arises under the following facts: The Stonewall Mutual Aid Association of Mobile has on deposit with your Department two Mobile City bonds numbers 1259 and 1827 respectively, for $500.00 each; that a judgment had been rendered by the Law and Equity Court of Mobile in favor of Annie Palmer against this Association for the sum of $253.32 and that Francis J. Inge, Attorney for the plaintiff in the case, has requested you to advise him how he may proceed to subject the bonds above mentioned to the payment of the judgment.

Section 1 of the Act referred to provides that, the class of associations to which the Stonewall Company belongs shall have at all times "at least $1,000.00 paid in as a benefit fund for the use of its members or policy holders. Such benefit fund must either be paid in cash or in bonds of either the United States, the State of Alabama or of a county or municipality of said State, of the face value of one thousand ($1000.-00) dollars. Such benefit fund shall be kept on deposit with the Insurance Commissioner of Alabama and kept by him as an indemnity fund for the benefit of its members or policy holders in this State." I am unable to find any other provision of law affecting this deposit or the duty of your Department relative to the same.

Section 2 of the Act of August 9th, 1907, above referred to, provides for the visitation and examination of such companies or association by the Insurance Commissioner and if after such examination the Commissioner is of opinion that the associa-

tion should be restrained from doing business, he is required to report such opinion with the facts upon which it is based to the Attorney General "whose duty it is, if he thinks the facts warrant the report, to apply to the chancellor of the chancery division, or the city or other court having chancery jurisdiction in which is located the principal office of the company or association, for the appointment of a temporary receiver, and an order requiring the officers of the company or association to show cause within a reasonable time why the company or association should not be restrained from continuing business. In the event it shall be ascertained that the company or association should be restrained from continuing business and if it shall appear that the interests of policy holders resident in the State of Alabama, require further intervention and protection the court may make the temporary receiver permanent, or may appoint a permanent receiver. In the administration of the duties of both temporary and permanent receivers they shall be subject to the laws now in force and to such reasonable orders of the court as may be necessary."

After a careful consideration of this question, I have reached the conclusion and give my opinion accodingly, that you have no authority to convert into cash the securities mentioned for the satisfaction of the judgment in question; that if you see fit to visit and examine this Association and if after such examination you are of opinion that the Association should be restrained from doing business, following which the Attorney General institutes the proceeding above mentioned, the court may, under proper orders, require the bonds now in your hands to be turned over to the receiver in the cause, to be held by him and administered under the orders of the Court for the benefit of its members or policy holders in this State. And in this manner alone can these bonds be reached and subjected.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Fraternal Orders—Exemption of Property from Taxation—When

February 14th, 1908.

The State Tax Commission,
Montgomery, Alabama.

Dear Sirs:—

You requested me today to advise you whether buildings owned by certain secret societies, such as the Masons, are liable to taxation when the buildings are not devoted to purely charitable purposes. I have a letter from Mr. J. P. Park, Tax Assessor of Tuscaloosa County, asking my opinion on the same subject and in order that the question may be put in definite form, I will adopt the facts of his letter as the basis of this opinion. Mr. Parks states that the Masonic Temple and Elks' Home were recently erected in Tuscaloosa; that the Masonic Temple consists of three stories, the first and second being used for business purposes and the third being used by the Masons as a Lodge Room. And that the Elks Home consists of a building devoted to the uses of the Order of Elks and an addition to the main hall used as an opera house. And that revenue is derived from the use of the parts of the buildings not devoted to the exclusive use of the respective orders.

Sec. 91 of the Constitution provides that "The Legislature shall not tax * * * lots in incorporated cities or towns, or within one mile of any city or town to the extent of one acre, nor lots one mile or more distant from such cities or towns to the extent of 5 acres, with the buildings thereon, when same are used exclusively for religious worship, for schools, or for purposes purely charitable." In the case of Burdine vs. Grand Lodge of Alabama, 37 Ala. page 478, our Supreme Court held that the courts "will take judicial notice, that the grand and subordinate lodges of free-masons within the State of Alabama constitute a charitable or eleemosynary corporation." That decision has never been departed from by our courts and is the law today. The Lodge of Elks, in my opinion, must be governed by the same rule and for the reasons laid down by the Court in the case above cited, the Court will take judicial notice of the fact that this lodge is likewise a charitable corporation.

If the buildings owned by those societies were devoted exclusively to the work for which they were organized, such buildings would be exempt from taxation within the limits prescribed by section 91 of the Constitution. But in both of the cases under consideration, the buildings owned by these societies are not used exclusively for purposes purely charitable. It may be that the income derived from the rental of such property is devoted to charitable purposes. But it is the land itself, with the buildings thereon, which when used for purely charitable purposes are not subject to taxation. And the fact that the buildings are in part devoted to the purposes of the societies, does not bring them within the protection of this statute. Such use does not comply with the strict language—"for purposes purely charitable." Exemption laws are strictly construed. "Liability to taxation is the rule—exemption the exception, to be proven by him who asserts it."

Swan vs. State, 77 Ala. 545.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Concerning Payment of Tax on Development and General Mortgage of Southern Railway Company.

February 15th, 1908.

Hon. Walter D. Seed,
State Treasurer,
Montgomery, Alabama.

Dear Sir:—

Your especial attention is hereby called to the following enclosures herewith:

First. The decree of the State Board of Compromise in the matter of the application of the Southern Railway Company, to have ascertained the amount of mortgage tax due and to become due upon its development and general mortgage to secure bonds of $200,000,000.

Second. The bond of the Southern Railway Company securing payment of future taxes, and,

Third. The undertaking of the Standard Trust Company of New York to certify the issue of future bonds.

All of these papers should be carefully preserved in your Department for future reference upon the contingency of the Southern Railway Company issuing additional bonds under the said general mortgage. You will note that in the decree of the State Board of Compromise, the State Auditor is instructed to "include in his annual report to the Governor all information concerning said bond issues during the period covered by his report, which he may have obtained whether by such certificates sent to him by the said trustee of said bond issues or otherwise." The bonds under the said general mortgage mature in 1945, thus it will be observed that the duty to include this matter in the annual report of the State Auditor to the Governor may devolve upon the State Auditor's successors in office for a number of years to come.

A record of all the papers referring to this transaction is also on file in this Department.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Concerning Payment of Tax on Development and General Mortgage of Southern Railway

February 15th, 1908.

Hon. Wm. W. Brandon,
State Auditor,
Montgomery, Ala.

Dear Sir:—

Your especial attention is hereby called to the following enclosures herewith:

First. The decree of the State Board of Compromise in the matter of the application of the Southern Railway Company, to have ascertained the amount of mortgage tax due and to become due upon its development and general mortgage to secure bonds of $200,000,000.

Second. The bond of the Southern Railway Company securing payment of future taxes, and,

Third. The undertaking of the Standard Trust Company of New York to certify the issue of future bonds.

All of these papers should be carefully preserved in your Department for future reference upon the contingency of the Southern Railway Company issuing additional bonds under the said general mortgage. You will note that in the decree of the State board of Compromise, the State Auditor is instructed to "include in his annual report to the Governor all information concerning said bond issues during the period covered by his report, which he may have obtained whether by such certificates sent to him by the said trustee of said bond issues or otherwise." The bonds under the said general mortgage mature in 1945, thus it will be observed that the duty to include this matter in the annual report of the State Auditor to the Governor may devolve upon the State Auditor's successors in office for a number of years to come.

A record of all the papers referring to this transaction is also on file in this Department.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Member of Legislature Not Eligible to Appointment on Text-Book Commission—Civil Office of Profit.

February 19th, 1908.

Hon. B. B. Comer,
Governor of Alabama,
Capitol.

Dear Sir:—

You requested me to advise you today whether a member of the present Legislature is eligible to appointment as a member of the Text-Book Commission of Alabama, created by the Act approved August 13th, 1907, (Gen. Acts 1907, p. 762.)

Section 59 of the Constitution provides that "no Senator or Representative shall, during the term for which he shall have been elected, be appointed to any office of profit, under this State, which shall have been created, or the emoluments of which shall have been increased during his term."

The act of August 13th, 1907, creates a Text-book Commission to consist of "such educators of known character and ability, men well acquainted with arranging courses of study and engaged in public school work, one from each Congressional District." And the act further provides that "before transacting any business pertaining to the duties of this commission, they shall each take an oath before some person authorized to administer oaths, to faithfully discharge all the duties imposed upon them as member of said Text-book Commission," etc. Many duties are imposed upon the Commission to the end of providing a uniform series of text-books to be used in the public schools of this State. By section ten of the Act it is provided "that said commission shall maintain its organization for five years, and at the end of said period of five years, the Governor shall name a simliar commission with like powers and a like term as the first named commission." It is provided in section eighteen that the members of the commission other than the Governor and Superintendent of Education "shall be paid the sum of $4.00 per day during the time they are actually engaged and in addition, shall receive ten cents per mile for each mile traveled from their homes to the place of meeting and return thereto."

I have quoted at length from the act for the purpose of showing the general nature of the commission and the scope of its work. It is my opinion, from a careful consideration of the question presented, that membership in this commission is "an office of profit under this State" within the meaning of section fifty-nine of the Constitution, and, therefore, that no Senator or Representative, who was a member of the Legislature which enacted this statute, is eligible to appointment on the commission, during the term for which he was elected.

In the case of Montgomery v. the State ex rel. Enslen, 107 Ala. 372, our Supreme Court had occasion to consider the corresponding section of the Constitution of 1875. That case involved the right of a member of the Legislature to hold the

office of the Judge of the Police Court of Birmingham, which office was created by the Legislature of which Mr. Montgomery was a member. The court quotes the following from Spelling on Extraordinary Relief, Vol. 2, Sec. 1780, as the rule for determining what constitutes a civil office of profit within the constitutional provision:

> "'There are three principal tests for determining whether one performing duties of a public nature is a public officer in the sense of subjecting his incumbency or employment to a quo warranto proceeding: First, whether the sovereignty, either directly through legislative enactment or executive appointment, or indirectly, as through a municipal charter, is the source of authority; Second, whether the duties pertaining to the position are of a public character,—that is, due to the community in its political capacity; and, third, whether the tenure is fixed and permanent for a definite period fixed by law, unless for neglect of duty or malfeasance, or subject to termination at the will of others without the assignment of cause."

The court denied the right of Mr. Montgomery to hold the office involved in that case.

Applying the principle quoted to the facts of this case we find, first, that the sovereignty is directly through Legislative enactment and executive appointment, the source of authority; second, that the duties pertaining to the position in question are of a public character,—that is due to the community in its political capacity; and third, that the tenure is fixed and permanent for a definte period fixed by law.

It is worthy of note that the Constitution of 1875 uses the expression *Civil* office of profit under this State," while the last Constitution uses the words "office of profit under this State," thus showing the intention of the framers of the Constitution of 1901 to extend the scope of this provision to embrace every office under this State. But it is not necessary to resort to a construction of this sort. The office in question is clearly within the inhibition of the Constitution,

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Foreign Insurance Companies—Reciprocal Licenses Fees and Taxes.

February 22nd, 1908.

Hon. Frank N. Julian,
Secretary of State,
Montgomery, Alabama.

Dear Sir:—

On the 7th instant you requested me to advise you whether under section 2595 of the Code of 1896 "Insurance companies of another state, where such state levies a tax upon insurance companies of this State, for doing business in said state, in case where their licenses, fees and taxes in another state exceed those required of such state, when there is not an insurance company in this State transacting business in such other state, should pay to this State such excess." The question presented in practical form grows out of the fact that the State of Virginia requires insurance companies of every other state to pay $2.00 as a license for the privilege of doing business in said State. There are Virginia companies doing business in this State but there are no insurance companies of this State transacting business in Virginia. And you desire to know whether you must collect from the Virginia Company doing business in Alabama, the same licenses, fees and taxes which are required by the State of Virginia to be paid by companies of this State doing busines there.

Section 2595 of the Code provides that foreign insurance companies doing business in this State shall "pay into the treasury of this State the taxes, fines, penalties, license fees, or otherwise, an amount equal to the amount of such charges and payments imposed by the law of such state upon companies of this state and the agents thereof." Thus you will observe that it is the policy of this State, plainly expressed in this statute to require of the Virginia insurance companies, doing business in Alabama, the payment of the taxes, fines, penalties and license fees which a company of this State and the agents thereof would there be required to pay. And this requirement of our statute is not made to depend upon whether an Alabama company is doing business in that state. And it is my opinion, and I so advise you, that the Virginia Company, in

the case above cited, should pay to this State an amount equal to the amount of such charges and payments that would be imposed by the laws of Virginia on an Alabama company there seeking to do business.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Sheriff's Fees for Removal of Absconding Felon.

March 6th, 1908.

Hon. B. B. Comer,
Governor of Alabama,
Montgomery, Ala.

Dear Sir:—

I am in receipt of a communication dated February 29th, from Hon. W. E. Fort, Private Secretary, requesting me to construe section 4566 of the Criminal Code as to whether or not said section applies to removal bills on requisitions or merely to removal bills from county to county within this State.

Section 4566 of the Criminal Code appears therein in Chapter 141, Article 5, which is devoted to "fees of sheriffs." In this Article are codified the several acts of the Legislature relating to and fixing the fees of sheriffs. Section 4566 is a codification of sections 2 and 3 of an act entitled An Act "To regulate the compensation of sheriffs for the removal of prisoners," approved December 12th, 1892. From an examination of the several sections of this Act, it appears conclusively to my mind that the regulation of the compensation of sheriffs for the removal of prisoners dealt with and referred to in said Act is the compensation of sheriffs for the removal of prisoners from and to different counties within this State.

Section 4569 of Article 5 of Chapter 141 which relates to the expense of bringing back absconding felons from other states to this state on requisitions is a codification of an act entitled An Act, "To provide compensation for the sheriffs and agents

of this State for the removal of prisoners from other States, territories and the District of Columbia," approved February 10th, 1891. This section provides for compensation and expenses of a sheriff or other person commissioned as an agent of this State for removing to this State to answer a charge of felony an absconding felon from another State, to be paid on the approval of the Governor, *as in other cases of removal of prisoners by sheriffs.* Under this section, in my judgment, the Governor is authorized to approve an expense bill of a sheriff that he deems reasonable in the particular case.

Hence, the employment of a guard for the removal of a prisoner from another state to this State is not authorized under section 4566, yet if the Governor sees fit under section 4569, he will be justified in a case where the necessity requires it, to allow and approve such extra expense on the part of a sheriff.

I herewith return letters enclosed to me.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Public Printing—What Constitutes and From What Fund Payable.

March 6th, 1908.

The Railroad Commission of Alabama,
Montgomery, Alabama.

Dear Sirs:—

I am in receipt of a communication dated February 28th from Hon. S. P. Kennedy, Secretary of the Commission, enclosing copy of bill of the Brown Printing Company for $272.80 for printing of rules of practice, general railroad laws, etc., and requesting me to render an opinion as to whether or not the bill for printing same is properly a charge upon the general annual appropriation for public printing and shall be paid out of the annual appropriation for that purpose.

The public printing which is required to be done under contract and for which an annual appropriation is made, is set out in Section 3385 of the Civil Code and is classified in section 3386 of the Code.

The former section provides for the printing of the annual or biennial report of the Railroad Commission and also all blanks, bulletins, circulars, notices and forms used in the office of and ordered by the Railroad Commission.

By a special exception, however, contained in section 3415 of the Civil Code of 1896, the payment for the printing of the annual report of the Railroad Commission is directed to be "made out of the funds arising from the license tax on railroads for the support of that commission." This section further provides that the "payment for all other printing authorized by this Chapter shall be made out of the general appropriation for that purpose."

It is my judgment, therefore, that the items appearing on the bill of the Brown Printing Company presented to the Railroad Commission of Alabama, being authorized under section 3385 and classified in Class 4 of Section 3386 of the Code, are payable out of the general annual appropriation for public printing. It does not appear that section 3486 of the Code, as last amended by the act of the Legislature, approved November 23rd, 1907, which provides that all money paid out under the provisions of this section, including such sum as may be necessary to procure office furniture and stationery, and to pay other office expenses, provided such other expenses shall not exceed one thousand ($1.000) dollars per annum, has any bearing on the question presented.

I herewith return the bill of the Brown Printing Company.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Registration of Voters on Special Days—Who Entitled to.

March 14th, 1908.

Hon. R. G. Hewitt, Chairman,
County Board of Registrars,
Birmingham, Alabama.

Dear Sir:—

I am in receipt of your letter of March 7th stating that the County Board of Registrars of Jefferson County desire my construction of that part of section 5 found on page 443 of the Acts of 1903, beginning with the words "unavoidable inability," and desire especially to know what is meant by the phrase "at other times."

Section 6 of the Act of 1903 has been embodied in Section 6 of an Act "To further regulate elections in the State of Alabama," approved November 23rd, 1907. See General Acts of the Special Session of 1907, page 70. The only change in Section 6 of any importance, is the provision requiring the registrars to sit on Friday and Saturday next preceding the day of each primary or special election as well as in the case of general or municipal elections. The language quoted in your letter from the Act of 1903 is used in the recent Act without any modification or change.

The construction of the words "unavoidable inability" when applied to applicants for registration at the sittings of the Board on the special days next preceding the days of the elections named in the statute is a matter which must be left largely to the exercise of a sound discretion on the part of the Board. I think the word "unavoidable" refers in this case to an inability which arises under circumstances beyond the control of the applicant, that is an inability that is produced under conditions and circumstances not within the control of the applicant. The word "inability," as generally used, means the state or condition of being unable physically, mentally, or morally to do a certain thing or to accomplish a certain result. In my judgment the word as used in the statute should not be confined to simple physical inability. An "unavoidable inability" may depend on the necessities growing out of the imperious and pressing obligations of domestic life or official

business, which arising from a high sense of duty in each case, would render it impossible for the applicant to register at one of the regular sittings of the Board.

As the statute provides that the applicant shall prove to the reasonable satisfaction of the Board that by reason of physical disability of himself or sickness in his family during the period the Board of Registrars were registering the voters in the precinct where the applicant resided, it would appear that the term "at other times" has reference to other regular sittings of the Board, and not to the period when the Board were registering the voters in the precinct of the applicant's residence.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Term Municipality Includes County—When.

March 16th, 1908.

Railroad Commission of Alabama,
Montgomery, Alabama.

Gentlemen:—

I have your favor of the 10th instant requesting me to advise you whether under section 30 of the Act approved February 23rd, 1907, (General Acts 1907, page 128) a county is a municipality within the meaning of this Section.

The Section in question reads as follows:

> "Nothing in this act shall prevent the carriage, storage, or handling of property free or at reduced rates for the United States, the State, *or any municipality*, or for charitable purposes, or to or from fairs and expositions for exhibition thereat," etc.

"A municipality is defined as a body formed by the incorporation of the inhabitants of a particular place or district, established to assist in the civil government of the state by the exercise of subordinate specified powers of legislation and regulation with respect to local and internal concerns." (20 A. & E. Ency. of Law, 2nd. Ed. 1080.)

In Horton vs. Mobile School Commissioners, 43 Ala. 598, our Supreme Court considered the question of whether the special statute governing the Board of Mobile School Commissioners, a corporate body having control of the schools of Mobile County, was saved from repeal by a section of the Revenue Law reading as follows:

> "That all laws or parts of laws of a general or special character, *except those enacted for municipal purposes,* upon the subject of taxation in this State, be and the same are hereby repealed."

And the Court said "The word 'municipal' in this exception, has no well defined technical meaning, nor does the language of the Revenue Act seem to confine its import to any very narrow bounds. It is evidently used in a general and not a particular sense. *The Legislature was aware that it did not apply solely to incorporated towns and cities*; but that it was equally applicable to incorporated bodies organized for the accomplishment of great and important public purposes, which for the sake of unity and successful administration, needed a body corporate, and special laws for its management. Municipal has been defined to be that which belnogs to a corporation or a city, and to include the rules or laws by which a particular district, community or nation is governed. * * * Any of these expositions of the word municipal, will, without any strain of construction, let in the corporations constituting the appellees in this suit." (43 Ala. 607). And the Court held that the laws governing this Board were not repealed by the repealing section of the law above referred to.

In Ex parte Selma & Gulf Railway Co., 45 Ala. 696, 732, this expression is found in the opinion of the Court, "It can hardly be denied that a county is a "municipal corporation." And the Court held that counties of the State were included within the term "municipality" as used in section 25 of Article 1 of the Constitution of 1868, which is as follows:

> "That private property shall not be taken or applied for public use, unless just compensation be made therefor; nor shall private property be taken for private use or for the use of corporations, other than municipal, without the consent of the owner."

In Dillard vs. Webb, 55 Ala. 468, the Court said, quoting from 1 Dill. Mun. Corp. Sec. 9 B. "Municipal corporations are bodies politic and corporate, established by law to share in the civil government of the county, but chiefly to regulate and administer the local, or internal affairs of the city, town, or district, which is incorporated."

I have not found any other expression in the Alabama Reports on this question. I have examined a number of cases from other states and the majority of them adopt a construction of the word municipality which will include a county. I quote the following from Durach's Appeal, 62 Pa. State, 493.

> "Municipalities, such as counties, cities and boroughs, are corporations created by the government for political purposes."

Section 30 of the Act in question is plainly expressed, namely to permit the carriage, storage or handling of property of the governmental agencies free or at reduced rates. No reason is apparent why a county should not be included within the terms of the Act and it is my opinion, and I so advise you, that the term "municipality" as here used must be considered and held to include the several counties of this State.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Reports of Chief Mine Inspector—Public Documents.

March 27th, 1908.

Hon. John M. Gray,
Chief Mine Inspector,
307-8 Title Guarantee Building,
Birmingham, Alabama.

Dear Sir:—

On February 19th, 1908, you requested me to advise you whether your reports on mines, reports of accidents and maps and other official documents of your Department are public

records in such sense that you should on request give copies of the same to interested parties, such as Insuranec Companies which are interested in mines insured by them. And you state that a coal company recently complained to you for furnishing an insurance company with a copy of your report made on the mine of such company.

Under section 2901 of the Code, the Mine Inspectors are required to examine all the mines in this State at least every three months and to see that all the requirements of Chapter 78 of the Code are strictly observed and carried out; and to make a record of all examinations of mines showing the various details mentioned in that section "together with all such other facts and information of public interest concerning the condition of mines, development and progress of mining in this State, as he may think useful and proper, and so much thereof as may be of public interest; to be included in his biennial report." There is nothing in the law governing the inspection of mines so far as I can find, which requires you to keep secret your reports and investigations; to the contrary the purpose of the law is that you shall give the public the benefit of your investigation. An insurance company is naturally interested in your official reports on the mines insured by them and it is proper that you should, on the request of such company, give them such information as you may have gathered in the line of your duties,—unless for reasons of State, you think it best to withhold such information. But the owners of mines have no cause of complaint against you if you make such records public.

.I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Bond of Warehouseman Annual.

March 28th, 1908.

Hon. J. J. Mitchell, Chairman,
State Tax Commission,
Montgomery, Alabama.

Dear Sir:—

On February 19th, 1907, you referred to me a letter to you from Hon. Wm. Blakey, Tax Commissioner for Montgomery County. The question raised by Mr. Blakey is whether under the Act of March 7th, 1907, (General Acts 1907, page 371) the bond required to be made by warehousemen under sections 3 and 4 of the Act is an annual bond, that is, to be made and filed at the time the annual license is procured by the warehousemen.

It is my opinion that this bond is an annual bond and must be made, filed and recorded by the Probate Judge of the County contemporaneously with the issuance of the annual license to the warehousemen.

I herewith return Mr. Blakey's letter.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Penalty of Corporation to Furnish Tax Assessor With Statement.

March 28th, 1908.

Hon. Wm. W. Brandon,
State Auditor,
Montgomery, Ala.

Dear Sir:—

Some days ago you referred to me a letter addressed to you by Hon. E. M. Shaw, Tax Assessor of Sumter County, in which he desires to be advised what penalty is imposed for the refusal or failure of a corporation to furnish the Tax Assessor with a statement showing who the stockholders are, the value

of the stock, the last sales of the stock, etc., as required by subdivision 9 of section 3911 of the Code as amended by the Act approved March 4th, 1903, (General Acts 1903, page 187.)

There is no specific penalty imposed by the law for the failure of a corporation to give the information required by subdivision 9. Section 5472 of the Criminal Code of 1896 provides that any president or cashier of a bank who fails or refuses to make the return to the assessor required by subdivision 8 of section 3911 of the Code, is guilty of a misdemeanor. But this statute, of course, cannot be extended to subdivision 9 of this section.

Under Section 3945 of the Code, if the assessor fails to procure upon verbal or written demand from any delinquent his list of taxable property before the first Monday in February the "assessor shall ascertain from inquiry or otherwise, the property and other subjects of taxation upon which such person is liable to be taxed, to the best of his information, and assess the same at its actual cash value, to the best of his judgment, and add 5 per centum of such value to the same as a penalty for non-assessment," etc.

The word "person" as used in the Code includes a corporation as well as a natural person. (Code Section 1.) Shares of stock in corporations can only be assessed in the manner required by said subdivision 9. The assessment, in order to comply with the law, must contain the information called for in this subdivision and if the president or other chief officer of the corporation fails to make an assessment which complies with this Section, the assessor should not receive the same and if he fails to procure a proper and legal assessment of such corporation, upon verbal or written demand, the assessor should proceed to make up an assessment of the shares of the stock under Section 3945 of the Code, adding the penalty mentioned in that section.

I herewith return Mr. Shaw's letter relative to this matter.

Yours very truly,

ALEX. M. GARBER,
Attorney General.

Foreign Corporation—What Constitutes Doing of Business by.

March 27th, 1908.

Hon. Frank N. Julian,
Secretary of State,
Capitol.

Dear Sir:—

Some days ago you requested me to advise you whether The Isle of Pines Transportation & Supply Co., a foreign corporation, should pay the license tax required to be paid by foreign corporations doing busines in this State by the Act of March 4th, 1907, (General Acts of Alabama 1907, page 290.)

Section 1 of this Act provides "That after the first day of July 1907, each foreign corporation, or non-resident corporation, or corporation organized under or by authority of the laws of any other State or government other than the State of Alabama, shall be required to procure from the Secretary of State a license authorizing the doing of business in the State of Alabama by such corporation, etc." Section 3 of this Act provides, "That it shall be unlawful for any such corporation mentioned in section 1 of this act, its agents, officers or servants to do or transact any business for or in the name of such corporation within the State of Alabama, without such corporation having first procured said license, and all contracts, engagements or undertakings or agreements with, by or to such corporation, made without a compliance with this act by the procurement, shall be null and void."

I take it that you also desire to be advised whether the corporation in question must pay the admission fee exacted of foreign corporations by the Act approved March 7th, 1907, (General Acts of Alabama, page 422).) Section 1 of this Act provides that "No corporation created by the laws of any other States or of any foreign country shall engage in or transact any business in this State without first having paid into the treasury, for the use of the State," certain charter fees therein named.

In connection with your letter you submit to me two letters from this Company to you and a letter from Mr. J. Barton Rettew, the Attorney for the Company. Mr. Rettew, in his

letter, expresses the view that under the method of the Company's business, it is not subject to State exactions in the way of taxation, citing in support of his opinion the case of Glouster vs. Penn., 114 U. S. 196.

It appears that the Company proposes to engage in foreign commerce establishing a direct line of transit from Mobile to the Isle of Pines, W. I.; that the Company will purchase goods and receive freight for transportation from different points throughout the United States and transport the same by its aforesaid line and the further statement is made that it is not the purpose of the Company at any time to do a local business in Alabama or to have any capital invested in such trade or to receive any profit from such local trade or business.

It seems from the facts submitted to me that the goods and freight so purchased by the Company throughout the United States will be transported by rail to Mobile, there stored in warehouses and at the convenience of the Company shipped to the West Indies from time to time in such quantities as may be necessary. On the letter of the Company to you the following words are printed, "Offices and Warehouse, Mobile, Alabama, Isle of Pines, W. I."

If the facts are correct as I have stated them, it is my opinion that the Company is doing business within the State of Alabama.

This is the rule declared by the Supreme Court of the United States under similar facts in the case of General Oil Company vs. John H. Crain, Oil Inspector the City of Memphis, decided by the Supreme Court of United States, March 23rd, 1908; and also in the case of American Steel & Wire Co. vs. Speed, 192 U. S. 500.

The case of General Oil Co vs. Crain supra, grew out of resistence by the Company of Crain's right to inspect oil held in the City of Memphis for shipment to other states on the ground that such inspection would effect an interference with interstate commerce and, therefore, be a violation of the Constitution. Justice McKenna announced the court's decision, holding that the oil was subect to state regulation as the oil in question was held in Memphis for distribution. I have not seen the official report of the opinion, but according to the newspa-

per account, Justice McKenna said: "The Company was doing business in the State and its property was receiving the protection of the State. Its oil was not in movement through the State. It had reached the destination of its first shipment and it was held there, not in necessary delay or accommodation to the means of transportation, as in the State, etc. vs. Engle, supra, but for the purposes and profits of the company.—*It was only there for distributtion, it is said, to fill orders already received. But to do this required that the property be given a locality in the State beyond a mere halting in its transportation. It required storage there—the maintenance of means of storage of putting it in and taking it from storage.*

In the case of American Steel & Wire Co. vs. Speed supra, the Company selected the City of Memphis as a distributing point and secured a local transfer company to take charge of its products shipped to that point, assort them, store them in a warehouse and make delivery in the original packages to the customers or the manufacturers, either, as expressly directed by it, or under general directions in favor of its recognized or approved customers whose names were furnished by the Company. And the Court said: "With these facts in hand we are of opinion that the Court below was right in deciding that the goods were not in transit, but, on the contrary, had reached their destination at Memphis, and were there held in store at the risk of the Steel Company, to be sold and delivered as contracts for that purpose were completely consummated." And the Court held that the goods were, therefore, subject to State taxation.

The facts in the case at hand distinguish it from the case of Glouster Co. vs. Penn., 144 U. S. 196, and, in my judgment, that case does not control here.

I herewith return the several letters handed me in connection with the matter.

Yours very truly,

ALEX. M. GARBER,
Attorney General.

District School Trustees—Liability for Poll Tax, Road-Duty and Jury Duty.

April 2nd, 1908.

Hon. Harry C. Gunnels,
State Superintendent of Education,
Montgomery, Ala.

Dear Sir:—

According to information received from your Department, there are about 11,000 District School Trustees in the State of Alabama. I am receiving every day letters from many of these Districts Trustees from all parts of the State, seeking information on the question of their exemption from the payment of poll tax and their right to vote in the May Primary. This situation, which indicates a condition of uncertainty in the minds of the people on this subject, has induced me to send you this official communication in order that you may send out from your Department the advices contained herein.

Section 3575 of the Civil Code of 1896 is as follows:

> "Township Trustees are exempt from road duty, jury duty and poll tax, so long as they shall continue in office and perform the duties thereof; and the certificate of the County Superintendent of Education shall be evidence of the fact."

The Constitution of Alabama of 1901, provides that "To entitle a person to vote at any election by the people, he shall have * * * * paid on or before the first day of February next preceding the date of the election at which he offers to vote all poll taxes due from him for the year 1901, and for each subsequent year." (Constitution Section 178). It further declares that "the poll tax mentioned in this Article shall be one dollar and fifty cents upon each male inhabitant of the State, over the age of 21 years, and under the age of 45 years, who would not now be exempt by law." (Constitution Section 194.)

The present Constitution of Alabama was ratified on November 28th, 1901. On that date, and for many years prior thereto, the statute (Code section 3575) was in force which exempt-

ed Township Trustees from the payment of poll tax, subject to the conditions prescribed in said section of the Code. Township Trustees being thus exempt from the payment of poll tax at the date of the ratification of the Constitution, were not required to pay the poll tax in order to qualify as electors.

The Redistricting Act of September 30th, 1903, abolished the Township lines for school purposes and retained Township Trustees under the provisions of the then existing law only for the purpose of selling and leasing the Sixteenth Section School lands. The said Act also created a local Board of three District Trustees for each District to be elected by the qualified electors thereof, and defined the duties of such District Trustees, which are practically the same as the duties of the Township Trustees under the old law.

March 13, 1906, my predecessor in office rendered an official opinion to the State Superintendent of Education, in which he held that the District Trustees, created under the general Redistricting Act, were exempt from the payment of poll tax, inasmuch as they were exempt under Section 3575 of the Code but therein called Township Trustees and that the mere change of the name, their duties being slightly changed, could not operate to defeat the exemption. From the date of the announcement of this opinion—March 13th, 1906,—I am informed by you that the Department of Education, acting under the authority of this opinion has uniformly advised District Trustees over the State that they were under the law, exempt from the payment of poll tax. I think the ruling of the Attorney-General's Department above referred to should be regarded as authority for the exemption of such District Trustees from the payment of poll tax and no District Trustee should be challenged at the Primary on May 18th, on the ground that he has failed to pay such tax.

It will also be a matter of importance to the District Trustees who will be elected on the first Saturday in July, 1908, to be advised of the fact that the new Code, which will become effective on May 1st, 1908, abolishes entirely Township Trustees, omits Section 3575 of the Code of 1896 and contains, as far as I have been able to discover after a careful examination, no provision exempting District Trustees under the general law from road duty, jury duty and poll tax.

This will effect a change in the status of District Trustees in respect to the payment of poll tax and on October 1st, 1908. they will be liable for the payment of such tax, and will also be subject to road duty and jury duty.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

State Sanatorium for Consumption and Tuberculosis.

April 3rd, 1908.

Hon. B. B. Comer,
Governor of Alabama,
Montgomery, Alabama.

Dear sir:—

On the 11th of February 1908, you requested me to construe the Act increasing the State sanatorium for consumption and tuberculosis, approved August 14th, 1907, (General Acts 1907, page 705) with respect to the following points:

> "Will it be necessary for the Governor to appoint the members of this commission before the first Monday in May 1908, in order to avoid any legal technicality in the election of succeeding members of the Board."
>
> "Will it be necessary for the Governor to organize the commission during tthe early part of this year in order to enjoy the appropriation of ten thousand dollars for the year 1908."

Answering your first question, it is my opinion that you should appoint the five members of the commission before the first Monday in May 1908, in order to avoid confusion hereafter in the terms of the members of the commission.

Answering your second question, it is my opinion that the appropriation of ten thousand dollars for the year 1908 must be drawn before September 30th, 1908; and as this appropria-

tion can be drawn as "actually needed," it would seem to be necessary for the commission to be organized at an early date in order to enjoy the appropriation.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Concerning Fees of State Board of Examiners For Holding Special Examinations.

April 10th, 1908.

Hon. B. B. Comer,
Governor of Alabama,
Montgomery, Alabama.

Dear Sir:—

On March 24th you submitted to me a letter of the same date from Assistant Examiner H. Y. Brooke, and requested me to advise you concerning the inquiry contained in Mr. Brooke's letter which is as follows:

> " Please request the Attorney General to render you an opinion at his earliest convenience as to whether or not the State Board of Examiners are entitled to receive five dollars per day for the time they work out of the State Treasury, and in addition thereto, all of the fees for holding special examinations."

The language of this inquiry is not entirely clear, but I take it that you desire to know, (1) whether the members of the State Board of Examiners under the Act of February 10th, 1899, "To establish a uniform system for the examination and licensing of teachers of public schools," as amended by the Act of February 8th, 1901 (Acts of 1900-1, page 856), are entitled to receive the fees required to be paid by the persons taking the special examinations provided for in this amendment of the original act, as compensation for the services rendered in holding said special examinations, and (2) whether the *appointed members* of the Board are entitled to receive five dollars ($5.00) per diem for the time they are engaged in the regular work of the Board under the Act and in addition thereto all of the fees for holding such special examinations.

The original Act, which was passed by the Legislature of 1898-9 and approved February 10th, 1899, deals with only one class of examinations, viz., the examination of teachers held in the different counties of the State and conducted by the County Superintendents of Education. Section 6 of this Act as originally enacted provided "that the fees received for the examination of teachers shall be paid into the State Treasury, etc.," and "the Assistant Examiners shall receive five dollars ($5.00) per day for the time they are conducting the examination of teachers under this Act, to be paid by the State Treasurer upon the Auditor's warrant; and no salary shall be paid these Examiners under this Act for more than two hundred days in any one year."

Section 4 of the original Act was amended by the Act of February 8th, 1901, in several respects, but the most material addition made is contained in the following provision:

> "Provided, that the State Board of Examiners may hold, at the Department of Education in Montgomery, special examinations for the benefit of persons who are prevented from taking the regular examinations by sickness, absence from the State or other unavoidable cause.—*Each person taking the special examination shall pay to the State Board of Examiners a fee of five dollars* ($5.00). Special examinations shall be equal in all respects to the regular examinations."

Section 6 of the original Act above referred to was also amended by the Act of February 8th, 1909, as follows:

> "The fees received from the examination of teachers *at regular examinations* shall be paid into the State Treasury to the credit of the Educational Fund, and the State Auditor shall, on the requisition of the Superintendent of Education, issue warrants on the State Treasurer to be paid out of the Educational Fund for the purpose of carrying out the provisions of this Act, such as payment of expenses for_____State Board of Examiners only, for the per diem of the State Board of Examiners, for paying county conductors and for other incidental expenses incurred in carrying out the provisions of this Act. The appointed members of the State Board shall receive five dol-

lars ($5.00) per day, including Sundays, for the time they are engaged in conducting the examination of teachers under this Act."

The State Bord of Examiners is composed of the Superintendent of Education and two other persons appointed by him. The statute provides a per diem compensation only for the "appointed members of the Board" and not for "the State Board of Examiners" as would be indicated by the wording of Mr. Brooke's question.

There are two points to which I desire to call special attention, wherein the amendatory Act of February 8th, 1901, adds to and changes that portion of the original statute here under consideration and from which the legislative intent and purpose may be determined, the rule being that the language employed should be given the ordinary, logical and reasonable construction and interpreted in the light of the entire statute as it now stands in its amended state.

In the first place, the system of special examinations is ingrafted into the statute by an amendment, and each person taking a special examination is directed therein to pay to the State Board of Examiners a fee of five dollars. It is to be noted also that at the time of the introduction of this amendment to Section 4 of the original Act, Section 6 of the Act provided that *"the fees received for the examination of teachers"* shall be paid into the State Treasury. It is reasonably manifest that it was not the intention of the Legislature that the "fees received from the examination of teachers," which would include the fees received from *both regular and special examination,* should all be paid into the Treasury. This is shown by the fact that at the same time the system of special examinations was inserted in the statute by the amendment to Section 4, there was also inserted in Section 6 after the words "the fees received for the examination of teachers" the words "at regular examinations." You will observe, therefore, that not only are the special fees directed to be paid to the State Board of Examiners, but that the provision in Section 6 requiring the payment of fees received for the examination of teachers into the State Treasury is amended by the addition of the words above mentioned, to-wit, "at regular examinations." So that this provision now reads thus: "The fees received from the examination

of teachers *at regular examinations* shall be paid into the State Treasury," which constitutes a limitation upon the fees to be paid into the State Treasury confining them to those received *only from regular examinations.*

As a statutory provision, this Act as amended might have been so framed as better to express the precise legislative meaning intended to be conveyed, but construed with reference to the purpose which the Legislature seems to have had in view in directing that the special fees should be paid to the State Board of Examiners and at the same time limiting the fees from the examination of teachers, which are to be paid into the State Treasury, to *those received only from regular examinations,* it is my judgment that the Legislature intended that the fees from the special examinations should go to the Board as special compensation for the work performed by it in preparing and grading the special examinations. The general rule that when a statute prescribes numerous duties to be performed by an officer and the mode of fixing his salary, the necessary implication must be that the salary so fixed is intended to constitute a complete compensation for all of his prescribed duties and supersedes all previous statutory enactments making special compensation for any portion of these duties, is sound and would be applicable to this case, but that it must yield to the special amendments showing that it was intended that the State Board of Examiners should receive the fees from special examinations as compensation for this particular work, in addition to the per diem salary provided as compensation when engaged in conducting the regular examinations.

The Act, as amended, prescribes that the appointed members of the Board shall receive five dollars per day "for the time they are engaged in conducting the examination of teachers." The words just quoted, construed in connection with the special examination feature of the statute, which allows the Board extra compensation in the form of special fees for the additional duties imposed for holding such special examinations, clearly mean a per diem compensation for the time the appointed members of the Board are engaged in conducting the *regular* examination of teachers. It is my opinion, therefore, that the five dollars per diem compensation should be restricted to the days the appointed members of the Board are engaged in conducting

such regular examinations. Certainly the Legislature did not intend that the Board should receive the special fees paid by the applicants taking the special examinations and that the appointed members of the Board should also receive a per diem of five dollars for holding such special examinations. It is evident that the Legislature contemplated that the appointed members of the Board should receive five dollars per diem for each day they are bona fide engaged in conducting the regular examination of teachers. I see nothing, however, in the law directly prohibiting the Board from holding special examinations on the days they are engaged in conducting the regular examination of teachers.

The solution of the questions presented here has not been reached without difficulty and the proper interpretation of the law as amended is involved in some doubt. The new Code gives no relief, as the provisions of the Act are codified therein without the slightest alteration in any respect. It is left to future Legislative enactment to clearly define the provisions of this statute.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Authority and Jurisdiction of Jefferson County Board of Health and Birmingham Health Officer.

April 20th, 1908.

Dr. W. H. Sanders,
State Health Officer,
Montgomery, Alabama.

Dear Sir:—

I have communication of April 1st requesting me to give you my opinion on certain questions contained in a letter to you from Dr. E. H. Stoll, Chairman of the Committee of Public Realth of Jefferson County, under rate of March 19th, a copy of which letter has been furnished me.

Dr. Sholl calls attention to many points of conflict and a general want of cordination in the various sections of the Code of the City of Birmingham devoted to the duties and responsibilities of the several health and sanitary officers of the City and states that this indefiniteness and inco-ordination has resulted in friction between these city officials. He further states that "we fully recognize how the present condition has arisen; it is only in the last four years that any attempt has been made to coordinate the health laws of the city; it is less than that that we have had a city Health Officer; before that time health affairs were chaotic and it is merely a survival of those former conditions which makes our difficulties of the present." His letter embodies a request for opinions from the Attorney General covering the whole range of activities of the Committee of Public Health of Jefferson County, and specifically inquires "where resides the appointive power, where the supervisory power of the City Bacteriologist, of the Meat and Milk Inspector, of the Garbage and Street Cleaning Inspector and of the Plumbing and Sewer Inspector."

It is not within my province to pass upon any conflicts which may exist in the several sections of the city code of Birmingham relating to the duties of sanitary officers. The adjudication of these conflicting provisions in the city code should be determined by the proper city authorities. I shall attempt only to define the legal status of the County Board of Health, acting through its Committee of Public Health, and of the Health Officer of the City of Birmingham, under the provisions of the amendatory Act approved August 15th, 1907, (General Acts of 1907, page 893.)

In an opinion delivered to you on November 14th, 1907, I announced that it was the duty of the County Board of Health to elect a Health Officer for every incorporated city or town in the county. It is not necessary here to elaborate the reasoning upon which this opinion was based. I merely refer you to this ruling of this Department of the date aforesaid.

In a letter under date of March 5th, 1908, addressed to you and involving the consideration of the question of the appointing power of a bacteriologist for the City of Birmingham, I expressed the following conclusion:

"I do not think, however, that the 'Health Officer' referred to in subdivision (f), Section 3 of the recent Act can be construed to mean a Bacteriologist for the City of Birmingham whose duties are restricted to certain investigations for the protection of the health laws. I am, therefore, inclined to hold that if the Code of the City of Birmingham provides for the appointment of a Bacteriologist in addition to a City Health Officer and provides a salary for such special officer, that the appointing power would rest with the City authorities although the field of work of such Bacteriologist would be under the control and subject to the inspection of the County Board of Health."

I now affirm, after a more extended investigation of the subject, the conclusion there reached. It cannot, with good reason, be asserted that the amendatory Act supra, bestows upon the County Board of Health in direct and specific terms authority to elect any municipal officer, as far as I have been able to discover, except a Health Officer for every incorporated city or town in the county according to the provisions of subdivision (f) of Section 3 of the Act above referred to. I think the terms of this Act should be construed strictly and, therefore, it is my opinion that the "appointive power of the City Bacteriologist, of the Meat and Milk Inspector, of the Garbage and Street Cleaning Inspector, and of the Plumbing and Sewer Inspector," lies in the City authorities of Birmingham as the Charter or Code of Birmingham may prescribe.

You will observe that Section 3 of the Act above mentioned contains the following provisions under subdivisions (a), (c) and (d):

"That it shall be the duty of the County Board of Health to supervise the administration of the health laws of the *City* in their respective counties; and to investigate through their committees of public health and health officers all nuisances to public health against which complaint has been alleged, and whenever a complaint is ascertained to be well founded_____ take such steps for the abatement of the nuisance complained of *as the law provides;* and to exercise through their Committees of Public Health and

> Health Officers special supervision over the sanitary conditions of public schools, _____ prisons, markets, public dairies, public slaughter pens, etc., in their respective counties."

So much for the duties of County Boards of Health prescribed by this Act.

It is to be observed also that section 7 of the Act under discussion deals with the duties of the Health Officer of a municipality. I desire to call your attention to subdivision 3 of this section which reads as follows:

> "It shall be the duty of the Health Officer of a municipality to exercise under the direction and control of the Committee of Public Health, acting for the county Board of Health, and in accordance with the health laws of the State and the *health ordinances of the municipality* general supervision over the sanitary interests of the municipality, and should he discover any cause or disease or any condition detrimental to the health of the people he shall, *so far as authorized by law or ordinance,* compel the removal, or abatement, of the same, etc.

"It would appear from a careful examination of the provisions of this Act, so far as it relates to the duties of the County Board of Health and the City Health Officer, in respect to the health laws and sanitary coditions of a municipality, that it was the intent and purpose, as well as the spirit, of this statute to empower the city Health Officer under the direction and control of the Committee of Public Health with the general control over the enforcement of the public health laws and general supervision over the sanitary conditions of the city. It would seem equally apparent that this general supervisory power must be exercised through the medium of and in accordance with the health ordinances of such municipality unless such ordinances conflict with the general laws of the State, and in that event the general law must govern." It is my judgment, therefore, that while the general supervision and enforcement of the sanitary laws is lodged in the hands of the County Board of Health of Jefferson County and the City Health Officer of Birmingham, elected by said Board of Health, yet their supervisory power over the City Bacteriologist, the Meat and Milk Inspec-

tor, the Garbage and Street Cleaning Inspector and the Plumbing and Sewer Inspector should be administered and applied "in accordance with the health laws of the State and the health ordinances of the municipality."

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Hard Labor Agent of County--Duty to Make Reports.

May 7th, 1908.

Hon. J. Craig Smith, President,
Board of Inspectors of Convicts,
Montgomery, Alabama.

Dear Sir:—

I have your favor of the 4th instant enclosing your letter to Judge F. M. T. Tankersly in which you request the report of county convicts of Crenshaw County and to which Judge Tankersly replied that the Circuit Clerk is the Hard Labor Agent for that County and that he has failed to make the report to the Probate Judge since the Spring of 1905. And Judge Tankersly desires to be advised how he may proceed to obtain this report.

Section 4523 of the Code of 1896 required the Board of Inspectors of Convicts to keep a record of all convicts sentenced to hard labor for the county and the Judge of Probate or agent of hard labor for the county is required to make certain reports to the Board concerning county convicts. For the failure to perform these duties the Judge of Probate was subject to impeachment. Under this section, the Board of Inspectors may demand of the Judge of Probate or of the hard labor agent, the reports therein required. If the Judge of Probate fails or neglects to make the reports or to have the same made by the hard labor agent for his county, an impeachment proceeding may be instituted against the Judge of Probate. Either the Judge of Probate or the hard labor agent for the county, as the case may be, may be required by mandamus to make and forward this report to the Board of Inspectors if they fail on demand to do so.

Section 4523 of the Code of 1896 is omitted from the Code of 1907. But this section is substantially adopted in Section 4 of the Act of November 30th, 1907, and which is set out on page 422 of Volume 3 of the Code of 1907. In this connection, I would also call your attention to section 24 of the same act requiring judicial officers immediately upon the sentence of any person to hard labor for the county to make certain reports to the Judge of Probate.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Auditor's Deed—Authority to Correct Description of Land.

May 5th, 1908.

Hon. Wm. W. Brandon,
State Auditor,
Montgomery, Alabama.

Dear Sir:—

You requested me on the 18th ultimo to advise you whether a deed which was executed by the former Auditor, Hon. Thomas Sowell, to Gaunt Crebs of date October 14th 1905, could be corrected by changing the description therein contained of "lot 13, block 46, Carbon Hill, Ala.," to "lot 13, block 146, Carbon Hill, Ala." You submitted a certificate from Judge Shepherd, Judge of Probate of Walker County, that lot 13 of block 46 was not sold and that lot 13 of block 146 was sold for taxes and bid in for the State. You also advise me that the Judge of Probate certified to you that lot 13 of block 146 was sold and bid in for the State.

Under the facts above recited, I am of opinion and so advise you that you have no authority to correct the deed executed by Auditor Sowell nor to execute another deed to lot 13, block 146, until the Judge of Probate certifies to you in the manner required by law that this lot was sold for taxes and bid in for the State; and before making such sale you should proceed, as in

an entirely new case, giving notice as required by lay to the former owner of the land of an application to purchase.

I herewith return the papers handed me in connection with the matter.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Auditor's Tax Deed—When To Be Executed By Successor.

May 6th, 1908.

Hon. Wm. W. Brandon,
State Auditor,
Montgomery, Alabama.

Dear Sir:—

On the 25th ultimo you handed me a letter addressed to you by the Central Trust Company of Mobile to which was attached a deed bearing date May 6th, 1890, and signed Cyrus D. Hogue, Auditor, which deed is neither witnessed nor acknowledged and you are requested by the Central Trust Company to execute another deed or acknowledge this one. And you desire me to advise you of your duty in the premises.

This deed was made under the authority of section 37 of the Act of February 28th, 1887, (Acts 1886-7 page 25) which provides after certain preliminary requirements that "on receipt of the purchase money, said Auditor in behalf of the State, *shall execute a deed of said lands to the purchaser, and thereby convey,* but without warranty or covenant of any kind on the part of the State, express or implied, to said purchaser all right and title of the State to lands so sold, and thereafter such purchaser shall possess all the right and title of the State, in and to, said lands," etc.

You will observe that this Act does not in terms require the deed of the Auditor to be acknowledged or witnessed.

Section 37 of the Act of February 28th, 1887, above referred to as amendatory of Section 122 of the Act of February

17th 1885, (Code of 1886 Section 614) and this Section contains the requirement that the deed of the Auditor to purchaser shall be "duly acknowledged." Section 4102 of the Code of 1896 contains the same words. The question then is presented whether the deed under consideration was sufficient without an acknowledgment or witness. Section 1789 of the Code of 1886 (Section 982 of the Code of 1896) provides that conveyances for the alienation of lands must be in writing and the execution thereof attested by one witness or where the party cannot write, by two wittnesses who are able to write and who must write their names as witnesses; and Section 1790 provides that the acknowledgment of the instrument operates as a compliance with Section 1789 upon the subject of witnesses.

Our Supreme Court has held that under Section 1914 of the Code of 1896 which directs the Sheriff to *execute a deed* to the real-estate sold by him under execution, such deed must be attested or acknowledged as other deeds. (Eureka Lumber Co. vs. Brown, 103 Ala. 140; Stubbs vs. Kohn, 64 Ala. 186). This conclusion is rested by the Court on the above mentioned sections of the Code on the subject of execution of conveyances. In the case last cited Judge Brickell said: "Conveyances made by ministerial officers, in the consummation of sales under judicial process, are as much within the operation of the statute as are conveyances of individuals." It is, therefore, my opinion that the deed was insufficient to pass the title of the State to the purchaser, the same being neither witnessed nor acknowledged. (Jackson v. Kirksey, 110 Ala. 547; Smith v. Watson, 124 Ala. 339).

The deed executed by Mr. Hogue was not in fact a deed within the meaning of the law. Assuming that all of the requirements of the law to entitle the proposed purchaser to a deed existed on May 6th, 1890, the date of the Auditor's attempted conveyance, it was the duty of the Auditor to make and execute and deliver a proper deed. And this duty could have been controlled by mandamus. (Purifoy vs. Lamar, 112 Ala. 123). It is generally held that statutes of limitation do not apply to mandamus proceedings although the Court may in the exercise of its discretion, deny an application for mandamus made after an unreasonable delay, especially where the delay has resulted prejudicially to the rights of respondent or others inter-

ested. (6 Cyc. 392.) While the delay has been for a great length of time, I cannot see that the rights of other parties would be prejudiced now by the execution by the Auditor of a deed, and it is my judgment that the Courts would on mandamus direct you to do so. It is, therefore, my opinion and I so advise you, that you should proceed to the execution of a new deed to the proposed purchaser Clara Collins; provided, of course, that all the requirements of the law existed on May 6th, 1890 for the execution of this conveyance. I enclose a deed for you to execute.

It is needless for me to say that you cannot acknowledge the present deed or do anything which will make it a valid conveyance.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Foreign Insurance Company—Requirement of Statute as to Deposit Strictly Construed.

May 13th, 1908.

Hon. Frank N. Julian,
Insurance Commissioner,
Montgomery, Alabama.

Dear Sir:—

I have your letter of the 9th instant together with communication of Hon. William A. Wright, Comptroller General of Georgia, relative to the securities of the Empire Life Insurance Company of Georgia. It appears from your letter that this Company was heretofore organized under the laws of Georgia to transact the business of life insurance and that it now desires to enter this State; and it offers to you a certificate of the Comptroller General of Georgia from which it appears that the Company has on deposit in Georgia securities to the value of $100,000.00, among which securities are municipal bonds and you desire to know whether such bonds may be considered in making up the deposit of securities required of foreign insurance companies by Section 4559 of the Code of 1907.

This Section of the Code provides that such life insurance Company shall satisfy the Insurance Commissioner that "it has on deposit with the Treasury of the State, or with the proper official of some other State, securities to the actual cash value of at least $100,000.00 *consisting of bonds of this State, the United States or the State in which such company is organized,* or notes or bonds secured by mortgages on real-estate for double the amount," etc.

Thus you will observe that the securities offered by the foreign company must not only be of the actual cash value of $100,000.00, but in addition, must consist of State or United States bonds, or real estate mortgages. The Legislature having prescribed eo nomine of what the securities must consist, you have no authority to accept any other class or kind of security. If the Legislature had intended to recognize municipal bonds in this connection, they would have been so included. Your authority is limited to this statute, and is my opinion, and I so advise you, that the Company in question is not entitled to do business in this State until you are satisfied that the securities on deposit in Georgia are of the class named in Section 4559 of the Code.

I have considered the suggestions made in Mr. Wright's letter to you on the subject and regret that the laws are such that I cannot advise you to admit the Empire Company on the present securities. I trust that my ruling will not bring about a situation prejudical to Alabama companies. But the law is plainly written and I am powerless to change it.

I herewith return Mr. Wright's letter.

Yours very truly,

ALEX M. GARBER,
Attorney General.

Convict Fund—What Items of Costs Payable From.

May 25th, 1908.

Hon. J. Craig Smith, President,
Board of Inspectors of Convicts,
Montgomery, Alabama.

Dear Sir:—

Replying to your favor of the 21st instant, I beg to advise you that Section 6572 of the Code of 1907 requires the following among other items of costs to be paid out of the convict fund on the conviction and sentence of the defendant to the penitentiary; "record for Supreme Court (per one hundred words) ten cents." There is no limit of the total fee to be paid for this service. Section one of the Act of February 18th 1897 (Criminal Code 1896 page 214) provides that there should be paid in such costs the following fees among others, "record for Supreme Court (per one hundred words) fifteen cents, not to exceed three dollars and fifty cents."

The omission under Section 6572 of the Code of any limit for this fee clearly shows the Legislative intention that the State should pay for the record for the Supreme Court at the rate of ten cents per one hundred words. There is no other construction that can be given the statute.

The whole amount of costs in anyone case, however, is still limited to $150 (Sec. 6573).

I remain,

Yours very truly,
ALEX M. GARBER,
Attorney General.

Term of Office of Notary Public and Ex-officio Justice of Peace—Not Extended by Code.

May 25th, 1908.

Hon. B. B. Comer,
Governor of Alabama,
Montgomery, Alabama.

Dear Sir:—

Replying to your communication of the 14th instant, I beg to advise you that a Notary Public and Ex-officio Justice of the Peace, whose commission expires after the new Code has gone into effect, must be re-appointed. Section 5175 of the Code of 1907 does not extend, in my opinion, the terms of such officers to the first Monday after the second Tuesday in January 1911.

I remain,

Yours very truly,
ALEX M. GARBER,
Attorney General.

Republican Party Emblem "Vulcan"—Duty of Secretary of State Relative To.

June 1st, 1908.

Hon. Frank N. Julian,
Secretary of State,
Montgomery, Alabama.

Dear Sir:—

I have your communication of this date in which you state that on September 3rd, 1904, there was filed in your office by Jos. O Thompson as Chairman of the Republican State Executive Committee of Alabama, the emblem "Vulcan" adopted as the emblem of the Republican party of Alabama; that this emblem has been again filed in your office to-day along with certificate of certain nominations made by said party in Convention assembled at Birmingham on May 6th, 1908, which said certificate contains the statement that said emblem was re-adopted at said Convention on May 6th, 1908, that the same is re-filed as the emblem of said party and that it has not been changed by the same or like authority as prepared, adopted and

filed the original emblem. You further state that on Feb. 16th 1908, there was filed in your office an emblem called "Arm and Hammer" by Jules W. Davidson as Chairman of the Executive Committee of the Republican party of Alabama. You desire to be advised whether said emblem "Vulcan" is still the emblem of the Republican party of Alabama.

Section 374 of the Code of 1907 (being Section 62 of the Act of October 9th, 1903, General Acts 1903, page 438) provides that "Each political party shall, by its state party convention or state executive committee, adopt, prepare, and file with the Secretary of State, at least sixty days before each election for state officers, by engraving or otherwise, at least one hundred and fifty copies of an emblem to be printed at the top of the column of such ballot assigned to such party as a distinctive and characteristic heading thereof._____The emblem once adopted, prepared and filed as aforesaid, shall continue the emblem of the party adopting the same until it is changed by the same or like authority as prepared, adopted, and filed the original emblem, and the changed emblem as prepared and adopted, is filed and accepted by the Secretary of State as in case of the original emblem."

Thus you will observe that if the emblem "Vulcan" was adopted in 1904 as the emblem of the Republican party of Alabama, the same continues to be the emblem of that party until it is changed "by the same or like authority as prepared, adopted, and filed the original emblem." Whether the emblem "Vulcan" has been changed by the same or like authority as adopted the original, is a question that you need not decide. The two emblems mentioned in your letter both purport to be the emblem of the Republican party. Under Section 375 of the Code of 1907, you are required on the filing of the emblem to certify to same to each Judge of Probate in the State under Section 377 of the Code of 1907, the Judge of Probate is directed in a certain manner to decide which faction of the party is entitled to the emblem, so that you are not called upon to decide whether the emblem "Vulcan" is still the emblem of said party. *I do not decide in any sense, directly or by implication, which Committee or which faction represents the* "Republican party of Alabama."

I remain,

Yours very truly,
ALEX M. GARBER,
Attorney General.

Section 200 of Municipal Code Repeals Local Act Creating Marion School District

June 5th, 1908.

Hon. Harry C. Gunnels,
State Superintendent of Education,
Capitol.

Dear Sir:—

Several days ago you submitted to me a letter from Mr. Chas. C. Johnson, County Superintendent of Perry County, dated February 15th, 1908, addressed to you, and two letters from Mr. Clifton C. Johnston, City Attorney of Marion, one bearing date of February 25th, 1908, addressed to you and the other May 8th, 1908, addressed to Mr. Chas. C. Johnston, County Superintendent. You enclosed also a copy of your letter of February 18th, 1908, in reply to Mr. Chas. C. Johnson's letter of February 15th, 1908.

You request me to advise you whether the views expressed by you in your letter of February 18th, 1908, to Mr. Johnson, are correct.

After a careful consideration of the entire question, I have reached the conclusion that your position as defined in your letter of February 18th, 1908, is correct; and that Section 200 of the Act of August 13th, 1907 (known as the Municipal Code) repeals the local or Special Act creating the Marion School district, so far as the same is in conflict with the provisions of the Municipal Code. This local or special act is not exempt from repeal by reason of the provision contained in Section 177 of the Municipal Code (section 1357, Code of Alabama of 1907) which section finds a practical application, as I am advised by you, only to the peculiar school systems existing in the counties of Mobile and Dallas.

I remain,

Yours very truly,
ALEX M. GARBER,
Attorney General.

Erroneous Use of "State Board of Assessment" In Statute.

June 8, 1908.

The State Tax Commission of Alabama,
Montgomery, Alabama.

Gentlemen:—

I have your favor of the 4th instant in which you state that subdivision 13 of section 2223 of the Code of 1907 gives the *State Tax Commission of Alabama,* authority to re-assess and re-value any property or assessment made by any officer of the County or State authorized to make assessments, etc., while section 2250 of the Code of 1907, gives to the *State Board of Assessment,* authority to order and direct re-assessments in certain cases; and the conflict thus appearing, you desire to be advised which of the two sections mentioned controls.

The State Tax Commission was created by the act of March 7th, 1907, (Gen. Acts 1907, p. 425), and section 9 of this act is codified as section 2223 of the Code of 1907, the language in each instance being substantially the same. By subdivision one of section 2223, the duty, power and authority is conferred upon the State Tax Commission " to have and exercise general and complete supervision over the assessment and collection of taxes and the enforcement of the tax laws of the State, and over the several county tax assessors, tax collectors, and county commissioners in the several counties of the State,' etc., also to confer with, advise and direct all assessors, collectors of State and County taxes, and County Tax Commissioners, as to their duty under the laws of this State." And by subdivision 13, "to assess, or cause to be assessed by the proper officers, any property subject to taxation, and to set aside and hold for naught any valuation or assessment of property made by any County officer within this State or by any Board of Revenue or Court of County Commissioners, or by any other officers authorized to make assessments, *and to re-assess or re-value said property, whether the original valuation or assessment be made by the property owner or by any officer of the State or any County, or Board of Revenue, or Court of County Commissioners of the several counties in this State,* unless the valuation or assessment shall have been previously within

the same tax year confirmed or determined by a court of record on appeal; and the *Commission may value and assess or re-assess any property tangible or intangible, subject to taxation in this State, without regard to any previous assessment or valuation,"* etc.

Section 2250 of the Code authorizes the tax commissioner to make additional assessments under certain conditions, and provides that if the valuation has been fixed in a certain manner such valuation shall remain so fixed for the succeeding tax year, with the further proviso, "that the property remain substantially in the same condition as to improvements unless otherwise ordered and directed by the *State Board of Assessment."* This proviso was added by the Code Commissioner or the Code Committee in revising the Code.

The State Board of Assessment exists by virtue of section 2135 of the Code of 1907, and consists of the Governor, Secretary of State, Auditor and Treasurer, its duty being to assess the items of property of railroad and other companies required to be returned to the State Auditor. The duties of the Board are specifically enumerated in section 2153 to 2145 of the Code, and deal exclusively with railroads, long distance telephones and Telegraph companies. After a careful consideration of the question propounded to me, it is my opinion and I so advise you that section 2223 of the Code governs and controls in the matter of re-assessment and re-valuation of property or setting aside valuations, and that the last clause of section 2250 does not in fact confer upon the State Board of Assessment the power to order and direct a change in valuation. I have come to this conclusion from considering the fact that the State Tax Commission was created with all the power and authority and the general and complete supervision over the assessment and collection of taxes and specifically with the duty and power of causing a re-valuation of property, under certain conditions. The duty of the State Board of Assessment is limited to a definite class of tax payers, and there is no method provided in the statutes in and by which this board may proceed to order and direct a revaluation of property; whereas, the State Tax Commission is invested with ample power in this respect.

Permit me to call attention to several principles of statutory construction which guide me in my opinion. In Turner v. State, 40 Ala. 21, 26, our Supreme Court said: "It is a cardinal rule in the construction of a statute, that effect is to be given, if possible, to every clause and section of it; and it is the duty of courts, as far as practicable, so to reconcile the different provisions as to make the whole act consistent and harmonious. If this becomes impossible, *then we are to give effect to what was manifestly the intention of the Legislature, though by so doing we may restrict the meaning or application of general words.*"

In 2 A. & E. Enc. Law, 2nd Ed. 619, it is said: "Where there is an irreconcilable conflict between different parts of the same act, the last in order of position must control, *or the clause which is directed specially to the matter in preference to others mentioning it incidentally only.*"

And on page 653 of the same volume: "When to give the words of a statute their ordinary meaning, or to adhere strictly to the arrangement of words and phrases in sentences, would result in *manifest contradiction of, or inconsistency with, the plain purpose of the law, evident mistakes, accidental omissions, and the improper use of words may be remedied, the ordinary meaning may be modified, and even the structure of sentences may be altered to prevent such a result.*"

It is not possible to reconcile the conflict between that feature of the two statutes under consideration. Neither can be said to be the last in order of position, and hence that principle cannot control in construing the two sections. Section 2223 is directed especially to the matter, whereas section 2250 contains a mere reference to the power of ordering the re-valuation. Clearly under such conditions it is necessary to give effect to what was manifestly the intention of the Legislature, though by so doing it may be necessary to substitute one phrase for another. The use of the words the State Board of Assessment in section 2250 is an evident mistake; the intention being to leave that specific power to the State Tax Commission where it was conferred in direct and unequivocal language.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Health Office of Municipality Has General Supervision Over Health Officers of City.

June 20th, 1908.

Dr. W. H. Sanders,
State Health Officer,
Montgomery, Alabama.

Dear Sir:—

Some days ago you handed me a communication from Dr. E. H. Sholl, Chairman of the Committee of Public Health of Jefferson County, with the request for an opinion on the question submitted to you therein. Dr. Sholl refers to my opinion of April 20th, 1908, and now desires to obtain through you a construction of certain sections of the Municipal Code in connection with the amendatory Health Act of August 15th, 1907.

It appears that further inquiry concerning the general authority and power of the City Health Officer of Birmingham has arisen on account of a certain ordinance passed by the City Council of Birmingham, a copy of which is attached to Dr. Sholl's letter, regulating the Bacteriological Department of the city. Among other things this ordinance provides that the office of City Bacteriologist "shall be considered an integral part of the municipal government, and as such the City Bacteriologist shall report directly to the Mayor" and * * * that he shall make any other bacteriological investigations that may be deemed by the mayor necessary for the determination of diseases threatening public health. It will be observed that no provision is made in this ordinance for the supervision of this Department by the City Health Officer as provided in section 7 of the amendatory Health Act, approved August 15th, 1907. and as provided by Section 163 of the Municipal Code Act, approved August 13th, 1907.

Subdivision b of Section 7 of the first named Act provides that:

> "It shall be the duty of the health officer of a municipality to exercise under the direction and control of the committee of public health, acting for the county board of health, and in accordance with the health laws of the State and the health ordinances of the municipality *gen-*

> *eral supervision over the sanitary interests of the municipality,"* etc. Section 163 of the latter act contains the following provision concerning the city health officer: "He shall perform all of the duties required of him by law and shall have all of the powers and authority granted to him by the city ordinances or *State laws.*"

Section 161 of this Act (Municipal Code) also provides that "such city health officer * * * shall be responsible for the proper execution of all laws, ordinances and regulations of the said city, pertaining to the health and sanitation of the same."

In this connection I quote the following from my opinion rendered on April 20th, 1908, construing the amendatory Health Act:

> "It would appear from a careful examination of the provisions of this Act, so far as it relates to the duties of the County Board of Health and the City Health Officer, in respect to the health laws and sanitary conditions of a municipality, that it was the intent and purpose, as well as the spirit, of this statute, to empower the city Health Officer under the direction and control of the Committee of Public Health with the general control over the enforcement of the public health laws and general supervision over the sanitary conditions of the city. It would seem equally apparent that this general supervisory power must be exercised through the medium of and in accordance with the health ordinances of such municipality *unless such ordinances conflict with the general laws of the State, and in that event the general law must govern.*"

It is essential to bear in mind here that the amendatory Health Act of August 15th, 1907, being a later enactment, governs wherever there may be conflict between the provisions of this Act and the Act of August 13th, 1907, known as the Municipal Code.

The sections of the Municipal Code mentioned above render obvious the purpose of its framers. The intention is manifest to confer upon the Health Officer of a municipality general supervision over the health laws and sanitary conditions of a city and to hold such officer responsible for the faithful and proper execution of the same. And in this respect the two

statutes named do not conflict, but evidently seek to establish the same general policy with respect to the administration and enforcement of municipal health laws.

In my former ruling, I maintained that although the general supervision of the sanitary laws was lodged with the City Health Officer of Birmingham under the direction and control of the Committee of Public Health, this supervisory power over the City Bacteriologist and other assistant health officers of the city should be administered in accordance with the health laws of the State and the health ordinances of the municipality. This was declared to be the law on the assumption that the health laws of the State and the health ordinances of the municipality were co-operative in their nature and purpose and not antagonistic, and together constituted a consistent and harmonious system.

It is my opinion that the ordinance referred to above is valid in so far as it requires the City Bacteriologist to report directly to the Mayor and clothes the Mayor with authority to require such officer to make such investigations as he may deem necessary in the interest of public health. But in so far as it would take from the City Health Officer and the Board of Health general supervision and control over the Bacteriological Department of the City of Birmingham, it is in conflict with both the Municipal Code and the amendatory Health Act, and to that extent is void; and such Health Officer and Board of Health are vested with the authority, *and the duty is likewise imposed, under and by virtue of the said general laws,* to exercise the supervision and control committed to them by the terms of the said laws. Such supervision and control should, therefore, be invoked and exercised by these officers, notwithstanding the provisions of this ordinance.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Compensation of Board of Registrars.

July 8th, 1908.

Hon. W. W. Brandon,
State Auditor,
Montgomery, Alabama.

Dear Sir:—

Some days ago you handed me the account of Mr. N. A. Hood, Chairman of the Board of Registrars of St. Clair County, rendered for six days' services as a member of the Board of Registration, two of the days being added for the time required in getting out notices and making alphabetical list of voters by Mr. Hood as Chairman, and the correspondence pertaining to the payment of this account as rendered. And you desire to know whether or not you are authorized under the law to pay the account in full, including the per diem for the two days in which Mr. Hood was engaged in getting out notices and making alphabetical list of voters.

Section 303 of the Code of 1907 reads as follows: "Each registrar shall receive $3.00 per day, to be paid by the State and disbursed by the several Judges of Probate for each day's attendance upon the sessions of the Board." I do not find any other provision in the Code allowing compensation for registrars for the services required of them. This section provides for compensation only for "attendance upon the sessions of the Board." It does not appear that there are any duties imposed upon the registrars except when acting as a "Board."

From the statement you made to me and from Mr. Hood's letter, it seems that Mr. Hood did not call a meeting of the Board but acted individually as Chairman of the Board in getting out publication of notices as required by Section 317 and preparing list of names registered as required by Section 318. In counties which do not exceed 50,000 in population, the time allowed the Board for completing registration is 40 working days, and the registrars while attending the sessions of the Board held on the days as provided by law, not to exceed 40 days, are entitled to receive $3.00 per day for each day's attendance upon the Board. I do not think that one of the registrars can perform any of the duties *required of the Board of*

Registrars, in the absence of a session of the Board, and receive $3.00 per day under section 303 of the Code. On the other hand, if it required 40 working days in a county whose population does not exceed 50,000 to make a complete registration, the *Board of Registrars* is authorized to *hold sessions* for the said number of days and receive as compensation for each day the sum of $3.00 as provided by Section 303 of the Code.

I return herewith correspondence enclosed to me.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Tax Collector's Commission on Escaped Taxes.

July 10th, 1908.

Hon. W. W. Brandon,
State Auditor,
Capitol.

Dear Sir:—

I have had under consideration for several days the question raised by Captain Geo. W. Hails, Tax Collector of Montgomery County, in his letter to you of June 24th, which you referred to me with the request for an opinion in the matter.

The question involved relates to the right of the Tax Collector to collect 5 per cent. upon all escaped taxes assessed and collected by him. Section 3998 of the Code of 1896 is as follows:

"He, (the Tax Collector) shall be entitled to receive 5 per cent. of the amount of all poll taxes collected by him, and the same per cent upon all escaped taxes, other than poll taxes, assessed and collected by him." This Section of the Code of 1896 was omitted from the present Code, which results in the repeal of this law allowing a tax collector commissions on escaped taxes.

This commission is still claimed by Captain Geo. W. Hails as provided for under the old Code, inasmuch as the repeal of the above section causes a reduction in his compensation dur-

ing the term of office for which he was elected. Section 281 of the Constitution of Alabama is invoked as a protection against such a reduction of his fees or compensation. This Section of the Constitution reads as follows:

> "The salary, fees or compensation of any officer holding any civil office of profit under this State or any county or municipality thereof, shall not be increased or diminished during the term for which he shall have been elected or appointed."

It is my opinion that this section of the Constitution prohibits a reduction of the fees or compensation of an officer of this character during his term of office and that the present incumbents in the office of Tax Collector in the several counties are entitled to claim commissions on escaped taxes assessed and collected by them as provided by Section 3998 of the Code of 1896, which law governed at the time of their induction into office.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Assessment of Shares of Bank for Taxation.

....

July 10th, 1908.

Hon. W. W. Brandon,
State Auditor,
Capitol.

Dear Sir:—

I have received from you an inquiry with respect to the assessment of shares of banks under subdivision 8 of Section 2082 of the Code of 1907. From the correspondence enclosed to me it appears that this question has come up from Mr. J. B. Doyle, Tax Assessor of Clarke County.

Mr. Doyle seems to be laboring under a misapprehension as to the position of the State Tax Commission as to the proper method of valuation to be adopted in the assessment of shares of bank stock. In Mr. Powell's letter to Mr. Doyle of April

14th, he advises that "sixty per cent of the amount so left" be taken as the assessment on such shares of stock. In the letter of the State Tax Commission to the Judges of Probate of Aug. 1st, the following language is used in referring to the Act providing for the assessment of shares of bank stock: "While the Commission does not feel justified in advising you to violate said Act, it does state that for the purpose of equalization and to secure uniformity of assessment against this class of property, it will be satisfied with an assessment of sixty per cent. of the fair cash market value of the shares of the capital stock of banks, ascertained as reqiured by said section, with no other deduction than that of the assessed value of the real estate of the bank situated in this State."

I do not take it that it is the purpose of the State Tax Commission to violate the law in any respect. It would appear that this Commision is endeavoring merely to secure general uniformity in the assessment of the different classes of property in the State. It is haraly necessary to state that subdivision 8 of the above Section, which provides that every share of an incorporated bank, etc., is to be assessed at its actual market value to the person in whose name such share stands on the books of such bank, remains the law.

I return the papers enclosed to me bearing on this matter.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Agricultural Fair Association—Exempt from Certain Taxes and Licenses.

July 17th, 1908.

Hon. J. A. Wilkinson, Commissioner,
Agriculture and Industries,
Capitol.

Dear Sir:—

I have your favor of the 14th instant requesting me to advise you what taxes or licenses, if any, Agricultural Fair Associations are exempt from.

In reply I beg to say that Section 72 of the Code of 1907 provides that "All state, county and municipal taxes on privileges are remitted and released to all agricultural fairs which may be granted or sold by them and conducted on their grounds during the exhibition of such fairs, on which a tax is now or may be hereafter levied by state, county or municipal authority." This statute is self-explanatory.

I also find two local acts having the same purpose, namely the Act of August 2nd, 1907, in the interest of the Alabama State Fair and Exhibit Association, (General Acts 1907, page 541) and the Act of August 6th, 1907, in the interest of the Alabama Agricultural Association, (General Acts 1907, page 561.) There may be other statutes in the interest of other associations, and if so a careful examination of the acts will disclose that fact.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Guarantee Companies—Licenses and Taxes.

July 22nd, 1908.

Hon. Frank N. Julian,
Secretary of State,
Capitol.

Dear Sir:—

Referring to your communication of June 9th, 1908, and in reply thereto I beg to advise you as follows:

Under Sections 3093 and 3094 of the Code of 1896 domestic and foreign guarantee companies were required to file with the Auditor before transacting business in this State and thereafter on the first days of January and July of each year, a statement setting forth certain facts relating to their business and affairs and also to pay to the Auditor an annual license tax of $100.00. You inform me that those sections were complied with and that certificates of authority to transact business were issued to such companies by the Auditor as re-

quired by said sections. Sections 1508 and 1509 of the Code of 1907 contain substantially the provisions of sections 3093 and 3094 of the Code of 1896, except that the statement is now required to be filed with, and the annual license tax paid to the Secretary of State.

You desire to be advised whether under the provisions of the Code of 1907 above referred to, the guarantee companies which complied with sections 3093 and 3094 of the Code of 1896 must comply with sections 1508 and 1509 of the Code of 1907.

It is my opinion and I so advise you that those companies which complied with sections 3093 and 3094 of the Code of 1896 should not be required to comply, during the present year, with sections 1508 and 1509 of the Code of 1907.

I further advise you as requested in your letter that it was the duty of such guarantee companies to file in your office on the first day of July, 1908, the statement mentioned in sections 1508 and 1509 of the Code.

As requested in your letter, I further advise you that foreign corporations doing a guarantee business in this State and taking out and paying for the license required by law, must also procure the permit mentioned in section 3652 of the Code of 1907.

I further advise you as requested in your letter that it is the duty of your Department under section 577 of the Code of 1907 to charge the fee there fixed for the issuance of the certificates required by sections 1508 and 1509 of the Code of 1907.

I beg to remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

County Board of Education may apportion money from General School Fund for County High School.

August 21st, 1908.

Hon. Harry C. Gunnels,
State Superintendent of Education,
Montgomery, Alabama.

Dear Sir:—

On the 25th ultimo you handed me a communication from Mr. W. T. Hollingsworth, County Superintendent of Chambers County, Alabama, to which was attached a letter from Mr. J. M. Tucker, and you desire to be advised upon the question raised in these letters, namely, whether the County Board of Education may opportion money from the general school fund for the support of the county high schools established under the Act of the Legislature of August 7th, 1907, (General Acts 1907, page 728.)

After a full investigation of the matter, it is my opinion and I so advise you that the County Board of Education may in its discretion apportion money from the common school fund for the support of such high schools. I am supported in my conclusion by the cases of Elsberry v. Seay, 83 Ala. page 614, and Shultes v. Eberly, 82 Ala. 242.

The authority for the apportionment of the school funds by the County Boards of Education is found in Section 1765, et seq. of the Code of 1907. A very wide discretion is reposed in these Boards in making such apportionment and I regard it as being within their power to apportion the same in part for the support of the high schools, established under the authority of the Act referred to, which constitute an integral part of our public school system.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Concerning Livingston Normal School and Disbursement of appropriation.

August 22nd, 1908.

Hon. John Purifoy,
Examiner of Public Accounts,
Montgomery, Alabama.

Dear Sir:—

On the 20th ultimo you requested me to advise you upon the following propositions:

> "1. In the absence of additional legislation, are the school authorities of the normal school at Livingston, legally empowered to use any part of the annual appropriation of fifteen thousand dollars, except the five hundred dollars for appliances and text books for other purposes than the payment of salaries of teachers?"
>
> "2. In the absence of legislation authorizing it, are the school authorities of the Livingston Normal School legally empowered to use any part of such appropriation for the purpose of paying teachers' salaries for teaching a summer school, in addition to the regular scholastic term?"

In reply I beg to submit the following:

1. It is my opinion that under the law as it exists at present, the school authorities of the Normal School at Livingston cannot legally use any part of the annual appropriation of fifteen thousand dollars, except the five hundred dollars for appliances and text books, for other purposes than the payment of salaries of teachers.

2. It is also my opinion and I so advise you that the school authorities of the Livingston school are not legally empowered to use any part of such appropriation in paying teachers' salaries for teaching a summer school in addition to the *regular scholastic term.*

The contention that the school authorities are permitted under the provisions of Section 261 of the Constitution to use as much as 4 per cent. of the appropriation for other purposes than for the payment of teachers employed in such school is not well founded and can have no application in this case. In the first place it would require affirmative legislation, pursuant to this constitutional provision, to authorize the expenditure of any part of this fund otherwise than for the payment of teach-

ers. There has been no such legislation to justify or authorize the expenditure of six hundred dollars out of the annual appropriation for improvements or the setting aside of six hundred dollars to be used for the payment of teachers for conducting a six weeks summer school. On the contrary, the original Act establishing the school specifically provides "that no portion of said sum (the annual appropriation) shall be used for any other purpose than the payment of the salaries of the teachers and the necessary appliances and text books for instruction; and provided further that not more than five hundred dollars shall be used for appliances and text books in any one year." See Acts 1882-1883, page 524. This part of the original act was amended by the Act of Feb. 23rd, 1901, but did not affect the provision above quoted.

As it appears that the prevailing custom has been heretofore to use part of the annual appropriation for improvements and to set aside a portion of such appropriation for the payment of teachers for the summer school and that the trustees have acted in good faith in so authorizing such expenditures, and there being no question that the amounts thus expended have been used for the benefit of the school, I feel that it is proper to limit the opinion here rendered to the future and suggest that it shall not have a retroactive effect. The points decided, however, must govern and control in the future in the disbursement of the annual appropriation of this institution.

I beg to remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

Poll Tax—Who Liable For.

September 7th, 1908.

Hon. Wm. W. Brandon,
State Auditor,
Montgomery, Alabama.

Dear Sir:—

In response to your request to advise you on the questions contained in your letter from R. J. Moody, Judge of Probate, Franklin County, enclosed to me, I beg to submit the following:

1st. The question of the liability of a man under forty-five years of age for the payment of a poll tax is discussed at length by Judge Denson, in the case of Frost v. State ex rel. Clements, 45 So. Rep. page 203. I suggest that Judge Moody read this case carefully. In this case Judge Denson holds that a man who became forty-five years of age on the 1st day of October, 1906, that such tax being a liability during the preceding year, was liable for the payment of same on that date and not having paid it on or before the 1st day of February, 1907, he would not be a qualified voter at a subsequent election.

2nd. The Act "To further regulate elections in the State of Alabama," approved November 23rd, 1907, provides in section 4, "That any person who becomes twenty-one years of age after October 1st of any year shall not be liable for a poll tax for the fractional part of the tax year which ends September 30th, thereafter." Page 69, General Acts Special Session 1907.

3rd. I wrote to Judge Moody in regard to the case of A. A. Frost. The determination of the qeustion involved in his case rests upon the consideration of the question whether or not Mr. Frost permanently left this State when he removed from it in December, 1903, or whether on such occasion he was temporarily absent from this State.

4th. A man in order to maintain his status as a qualified elector of this State must pay all poll tax due from him for the year 1901 and for each subsequent year. The payment of a poll tax twice for the same year and the failure to pay such tax for the next succeeding year is not a compliance with the law.

I herewith return the letter of Judge Moody enclosed to me. I beg to remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

See later case of Finklea vs. Farrish, 49 So. Rep. 366.

Interest Fund of Girl's Industrial School—Authority to draw warrant for, Under Section 1932 of Code.

November 7th, 1908.

Hon. Wm. W. Brandon,
State Auditor,
Montgomery, Alabama.

Dear Sir:—

In reply to your communication requesting me to advise you whether you have authority under section 1932 of the Code of 1907 to issue your warrant to the Treasurer of the Girls' Industrial School for the accumulated interest due to June 30th, 1908, on the funds realized from the sale of lands granted by Congress under the congressional Act of Feb. 18th, 1899, to said school, and whether this claim is a legal one against the State of Alabama, I beg to advise you as follows:

Under said Section 1932 of the Code of 1907, which is a codification of the Act of Feb. 28th, 1907, (General Acts of Alabama, page 235) it appears to be the manifest intention and purpose of the State to execute in good faith the trust reposed in it by Congress when granting the lands to the State for the benefit of said school. It further appears that it was the purpose and intention of the Act of Congress and also of the Act of Feb. 17th, 1899 (General Acts 1898-9, page 222) whose provisions undertook to carry into effect the congressional act above mentioned, then pending as a bill before Congress, that the proceeds of the lands so granted, when sold or leased, should forever remain a fund for the use of said school. The Act of Dec. 10th, 1900 (Acts 1900-01, page 241) again expressed the intention of the State in this regard. Subsequently the Act of Sept. 16th, 1903 (General Acts 1903, p. 237) appropriated fifty thousand ($50,000.00) dollars to this school for building purposes with the avowed intention and the declared condition that the said appropriation should be a payment or refunding of the fnnds realized from the sale of the lands so granted by Congress and that no interest should be hereafter paid on the said sum thus appropriated. I here quote Section 257 of the Constitution of Alabama of 1901, which was Section 2 of Article 3 of the Constitution of 1875:

"The principal of all funds arising from the sale or other disposition of lands or other property, which has been or may hereafter be granted or entrusted to this State or given by the United States for educational purposes shall be preserved *inviolate* and *undiminished;* and the *income* arising therefrom shall be faithfully applied to the specific object of the original grants or appropriations."

I now submit my conclusions:

In view of the trust reposed in the State of Alabama by the said Act of Congress, of the expressed purpose of the Legislature of Alabama and of the provision of the Constitution of Alabama just quoted, it is my opinion that the Act of Sept. 16th, 1903, in so far as it attempted to appropriate for building purposes any part of the *principal* of the funds realized from the sale or other disposition of lands granted as set out above by the Act of Congress for the use of the said Industrial School for Girls, being in conflict with the terms of the trust reposed in the State by Congress and in conflict with the Constitution of Alabama, is invalid. In my judgment this Act clearly violates the trust so reposed in the State by the Act of Congress as well as the Constitutional provision contained in Section 257, of the Constitution of Alabama.

Therefore, you are authorized under the law to issue your warrant on the State Treasurer in favor of the Girls' Industrial School, upon the order of the President of the said school, for the accumulated interest at the rate of 6 per cent. per annum on the whole amount of the fund heretofore realized and paid into the State Treasury from the sale of lands so granted by the said Act of Congress to said school.

It follows, of course, that the claim which is submitted with your letter, purporting to be a statement of this accumulated interest, is a legal charge against the State under section 1932 of the Code. You should, however, investigate and determine for yourself the correctness of the facts and figures upon which the claim is based. I return to you the papers enclosed to me referring to this matter.

The validity of the said Act of Sept. 16th, 1903, not being questioned, was not, therefore, considered in my opinion to

you on this subject under date of March 27th, 1907. This ruling is a modification of that opinion.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

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INDEX TO OFFICIAL OPINIONS.

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